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NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005—Continued

Mrs. DOLE. Mr. President, I wonder if I might engage the distinguished Chairman in a brief colloquy.

Mr. WARNER. Certainly.

Mrs. DOLE. I thank my colleagues. Mr. President, as a member of the Personnel Subcommittee, I am acutely sensitive to the enormous challenges confronting our National Guard and Reserve forces, and their families, as they are called upon to defend our Nation in the war on terrorism. North Carolina is at the forefront of National Guard and Reserve mobilizations, with 31 percent of our State's 23,300 National Guard and Reserve members currently mobilized.

The University of North Carolina, in partnership with a wide range of universities and community organizations, is developing a National Demonstration Program for Citizen-Soldier Support to augment, strengthen, and refine the existing framework of support for National Guard and Reserve personnel, and their families. The objectives of the demonstration program are to strengthen communication and information dissemination; strengthen community support systems; strengthen support systems for children and adolescents; strengthen health and mental health care systems; strengthen employment support networks; and address proactively emerging issues of importance to our personnel and their families. This National Demonstration Program of Citizen-Soldier Support has been presented to a wide variety of civilian and military leaders, and has been uniformly supported as timely, substantive, and highly promising as an adjunct to existing Department of Defense programs and services.

Unfortunately, as a relatively new initiative, this National Demonstration Program for Citizen-Soldier Support was not included as part of the President's budget request and was not authorized within the bill now before the Senate. It is my understanding that the decision to not include the National Demonstration Program for Citizen-Soldier Support in the FY05 Defense Authorization bill was not made with prejudice to the program but, rather, was based on the emerging nature of the structure and deliverables associated with this program—a program that is focusing on how to best assist our Reservists and their families in their newly emerging roles in the war on terror.

Mr. WARNER. Mr. President, the Senator from North Carolina is correct. At the time that the Armed Services Committee was preparing its mark, there was not sufficient data available concerning the specific elements of the proposed program, and its interrelationship with other existing and emerging programs within the Department, to fully assess the merits of the National Demonstration Program for Citizen-Soldier Support. The absence of this proposed program in the bill should not be interpreted as a negative assessment.

Mrs. DOLE. I thank the Chairman. I might also ask the Chairman if he would agree with me that our Nation's security depends on the mission-readiness and retention of our citizen-soldiers, and that for the total force to function effectively, we must make certain that these men and women, their families, and employers have needed support while they prepare for, carry out, and eventually return from active military service.

Mr. WARNER. I would agree wholeheartedly with the Senator from North Carolina's statement. At at time when we are relying more and more on our National Guard and Reserve forces to defend our national security, we must continue to provide direct and substantive support to these personnel and their families.

Mrs. DOLE. I thank the distinguished Chairman. Given this concurrence on the importance of ensuring necessary and effective support for our National Guard and Reserve families, I ask the Chairman if he would be willing to support my effort to bring this proposed Demonstration Program for Citizen-Soldier Support to the attention of the appropriate Department of Defense offices. This effort will require modifying elements of the proposed program, where appropriate, to maximize synergies with ongoing Department of Defense initiatives and exploring options within the defense budget for funding implementation of the program.

Mr. WARNER. I commend the distinguished Senator from North Carolina for her steadfast advocacy for our men and women in uniform, and their families, and I would be pleased to work with her on this important issue.

Mrs. DOLE. I thank the distinguished Chairman for his courtesy.

Mr. ALLEN. Mr. President, I wonder if I might take just a minute to ask the Chairman whether I am correct that developing a reliable, automated three-dimensional facial recognition capability has significant implications for our fight against terrorism and would be of great interest to the defense, intelligence and transportation security agencies.

Mr. WARNER. Yes, that is certainly my understanding.

Mr. ALLEN. I also understand that one very promising approach would be to use laser radar to acquire such a three-dimensional image. This technology is highly accurate, and is already used in industrial applications to measure such things as minute imperfections in airplane wings. Unlike more traditional photography, it also would work in a greater variety of lighting

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

conditions and at a much greater distance. It also has the advantage of avoiding allegations of racial profiling because it makes no use of skin color, instead measuring facial features.

Mr. WARNER. I understand that accuracy has been a problem with some systems developed to date so new approaches would be welcomed.

Mr. ALLEN. Does the Chairman agree it would be worthwhile to explore taking existing industrial technology and applying it to the problem of quickly and reliably identifying at a distance moving individuals at such locations as airports and border crossings?

Mr. WARNER. Yes, I think that if there were funding for such a development project it offers the prospect of significant security benefits.

AFRTS

Mr. WARNER. In discussions with my good friend and colleague, Senator INHOFE, I have been made aware of the fact that questions have arisen about the intent of amendment 3316 regarding the American Forces Radio and Television Service, or AFRTS, submitted by Senator HARKIN. That amendment to the pending legislation was accepted on June 14, 2004.

Mr. INHOFE. That is correct. Numerous concerns have been expressed from my home State, and, I believe, many other States, about this amendment. There is a belief that this amendment is intended to be critical of the AFRTS and the manner in which it makes current programming decisions regarding radio and television shows featuring political commentary.

Mr. WARNER. Thank you for offering me the opportunity to clarify this point. In my view, the intent of this amendment was not to call into question the performance of the AFRTS. Indeed, as my staff and I examined the proposed amendment originally submitted by Senator HARKIN, we saw that it called for the establishment of a Presidential Advisory Board to examine the manner in which AFRTS carries out its mission and to submit recommendations on how the AFRTS should carry out programming. As we looked at the manner in which the Office of the Secretary of Defense for Public Affairs and AFRTS perform its mission, however, it became clear that the case had not been made that changes were necessary or that such an Advisory Board was needed.

Mr. INHOFE. Is it correct to say, then, that this Harkin amendment expressing the sense of the Senate was actually intended to be an expression of support for the current approach of the Department of Defense to the AFRTS which provides programming representing a cross-section of popular American radio and television offerings and emulating stateside programming seen and heard in the United States?

Mr. WARNER. Absolutely. The amendment cites word for word relevant portions of the current Department of Defense Directive concerning AFRTS, including a statement of the mission to be accomplished and the key principles that should be followed in order to provide a free flow of political programming from U.S. commercial and public networks. The amendment specifically states that the mission statement is appropriate. Recognizing that there are several hundred satellite stations or ''outlets'' around the globe at which programming decisions are made on a daily basis, the amendment goes on to recommend that the Secretary of Defense ensure that these important principles, which can be summarized as fairness and balance in presenting shows on various topics, including political commentary, are being accomplished.

Mr. INHOFE. Is it correct to say that those who make the programming decision for AFRTS have an obligation to consider the popularity and desirability of radio and television programming? In other words, should the AFRTS take note of national commercial ratings as well as local and worldwide formal audience surveys as to what their audience desires to see and hear on their AFRTS programming?

Mr. WARNER. Yes. That would clearly be one factor among several that should be considered, consistent with the goal of providing the same type and quality of American radio and television news, information, and entertainment that would be available to military personnel and their families if they were in the continental United States. Other factors should also be considered in achieving the AFRTS goals of fairness and balance in presenting all sides of important public questions, and the amendment was intended to underscore the importance of those goals.

Mr. INHOFE. I thank the chairman for that clarification.

AIR NATIONAL GUARD

Mr. BIDEN. I would like to take a moment to engage the Senator from Michigan in a discussion about information operations in the Air National Guard. Before we begin, I would also like to thank my colleague for his willingness to have this discussion on an issue of great importance to national security and to many of the Air National Guard personnel in my State.

Let me start by saying that I think most of my colleagues understand that while the world today has changed, some things have stayed the same. When you are trying to stop terrorists, just like organized crime, you have to follow the money. These days, in order to follow the money, you have to have the very best in information operations skills. You have to understand the computerized financial networks and security systems used by financial institutions. In addition, you have to be able to protect your own information. This is a critical aspect of the war on terrorism and one where the Government needs more capability.

Last year, the Defense Authorization Conference Report provided 30 additional Air Guard personnel that we had hoped would be used to stand up a new unit in Delaware to do this mission. This year, Senator CARPER and I had hoped to finish that work by providing a total of 60 personnel for that unit. Unfortunately, we are not able to do that because the Department of Defense has not evaluated this proposal to determine whether it is a mission that should be assigned to the Air National Guard.

We understand that the Department of Defense has an established process for assigning missions and determining the manning necessary to support those missions. Expanding the information operations capability of a unit or units within the Air National Guard has not been considered through this process.

Mr. LEVIN. My colleague from Delaware is correct. The Department of Defense has a rigorous process for determining whether a new mission should be assumed as a military mission and that expansion of the information operations capability of the Air National Guard has not been considered by this process. Additionally, the Department of Defense is conducting a complete review of the Guard's roles and missions right now.

Mr. BIDEN. I hope that we can agree that the Department's review should include an examination of using the Air National Guard for emerging missions like information operations.

Mr. LEVIN. I can commit to the Senator from Delaware that I will do all that I can to ensure that this area is included in the Department's review and given full consideration.

Mr. BIDEN. I also hope that we will have their input regarding the mission and its suitability for the Air Guard before we take up next year's Defense Authorization bill. I would also like to make sure that the consideration of this particular mission takes into account the unique skills present in the Delaware Air National Guard and the work that they have already done in this area.

Mr. LEVIN. Again, I commit to my colleague that we will work with him and the Department of Defense to get that thorough and timely consideration.

Mr. BIDEN. I thank my colleague for those assurances and look forward to working with him over the next year to make sure our information operations needs are met.

Now, let me explain why I think it is so important to stand this unit up in Delaware.

Delaware is uniquely situated to provide the skills needed for information assurance and financial tracking. Delaware is host to 7 of the top 10 banking institutions in the U.S. Delaware also has the highest amount of computer networking per capita of any State. In addition, major research companies like DuPont and Astra-Zeneca make their headquarters in Delaware. Last, Delaware has the highest number of

scientists and engineers per capita in the U.S.

All of those statistics mean that many members of Delaware's Air National Guard have civilian employment in banks or other institutions. They understand what is required to protect financial information and to track it. They are on the cutting-edge of information protection today.

Their skills cannot be used by the Government, however, because banks and financial institutions are very sensitive about the employees of other banks reviewing their financial transactions. To do this type of work, a person must be a Government employee. One of the best ways to provide the benefit of these private sector skills to Government agencies fighting terror is through the National Guard. Guard personnel stay on the cutting edge of these skills because of their private sector jobs. They can then provide that knowledge to the Government, something that a civilian government employee cannot do.

In 2003, the National Security Agency and the Air Intelligence Agency recognized their shortfalls in information assurance and tracking skills and started asking some of these Delaware Guardsmen and women to help them meet their requirements. NSA will have spent $945,000 between 2003 and 2004 to make use of the Delaware Air Guard's expertise. They would like to spend an additional $900,000 in 2005. AIA is spending $150,000 in 2004 on these missions. They are spending this money because a real need exists.

Last year, the Senate, and then the full Congress, agreed that this mission needed support and a full-time unit. Thirty personnel were added to the Air National Guard's end-strength to create this new information operations unit. This year, we had hoped to finish the job by providing the full complement of 60 personnel needed for the mission and the $3.997 million needed to fully fund this unit. That is $2.75 million for personnel costs and $1.247 million for operations and maintenance. Unfortunately that will not be possible.

Some may wonder why we sought an amendment to add the personnel and funding needed. The reason is simple. The Delaware Air National Guard is too small to move people to this mission and still do their primary tactical airlift mission. The 166th tactical airlift wing has had its C–130s fully tasked to support operations in Afghanistan and Iraq. When I wrote Lieutenant General James at the Guard Bureau about standing up this new unit, he replied that he thought Delaware's Guard was well-postured for the mission, but his ''end strength cap makes it challenging to resource new initiatives.'' Our amendment would have taken care of that challenge.

Up to now, the personnel who have been working with NSA and AIA so far have been working three jobs. Let me say that again, three jobs. It is simply not sustainable. They cannot continue to do their regular Air Guard mission in the 166th tactical airlift wing, their civilian job, and the third job of helping NSA and AIA. With a new unit, we can provide the critical information operations skills needed to fight terrorism without harming the on-going tactical airlift mission that is supporting troops in Afghanistan and Iraq.

I know end strength increases are controversial, but we need to look at the big picture. Remember, Congress agreed that a new unit was needed to do these missions last year. The facts on the ground have not changed. This is exactly the type of new mission the Air Guard should be doing. Only with the Guard can you get the commercial expertise and cutting edge knowledge needed to protect information systems and to track financial transactions. I look forward to hearing the Pentagon's thoughts about this new mission.

Again, I think it's important to stress that information assurance and financial information operations are critical to the war on terrorism and to a transformed military. This is a growing area, not a shrinking one. We have looked carefully at all of our opportunities to provide the needed highly-skilled personnel to the fight. It is my belief that we can only do this if we create a unit to take advantage of the experienced and knowledgeable personnel available. No matter how patriotic people are, they cannot continue to work three jobs for years on end. Creating the new 166th information operations unit in the Delaware Air National Guard will enhance national security. It was the right thing to do last year and it's still the right thing to do. I hope that the Air Force will recognize that as we move forward in the war on terrorism.

JOINTSTARS

Mr. CHAMBLISS. Mr. President, I rise today to discuss the heavily tasked, high value asset of the E–8C JointSTARS fleet, which provides real-time surveillance and targeting for our armed forces. This critical asset, operated by an integrated wing located in my home State of Georgia, has worldwide commitments and is essential to the effective execution of the combined air-land strategy and tactics for our forces. However, the current engines do not provide sufficient power for the E–8C JointSTARS fleet to meet all of its operational requirements.

Mr. WARNER. The Senator from Georgia is quite correct in his observation and assessment and our committee has urged the Department to move forward with its economic analysis of engine alternatives for this critical fleet of aircraft. The Senator from Georgia should be proud of the 116th wing of the Georgia Air National Guard, as the work that this integrated wing performs on a daily basis is responsible for saving many soldiers' lives. As he stated, the E–8C JointSTARS fleet provides critical airborne battle management command and control.

Mr. CHAMBLISS. As the chairman has mentioned, the conference report on the fiscal year 2004 National Defense Authorization Act required the Secretary of Defense to submit a report to the congressional defense committees providing an economic analysis comparing the options of maintaining the current engines on the E–8C JointSTARS aircraft, purchasing and installing new engines, and leasing and installing new engines. This report was to have been submitted by February 13, 2004, but has yet to be received.

The engines that currently power the E–8C JointSTARS aircraft fleet are the same engines we have gone to great lengths to replace over the last decade in the Air Force's tanker fleet. The engines are old, provide marginal power to support the E–8C's taskings, and are expensive to operate and maintain compared to new engines currently available in the commercial market. These are not just my observations. Let me quote from a recent memorandum from the Vice Commander of Air Combat Command to the Air Force Vice Chief of Staff:

This letter provides a brief update on our efforts to re-engine JSTARS, which continues to be one of our top initiatives for the E–8. The current TF–33–102C engines do not satisfy desired safety margins or meet operational needs. An Air Force Flight Standards Agency critical field length waiver is required to support takeoffs with current engines. Additionally, Operations ALLIED FORCE, ENDURING FREEDOM, AND IRAQI FREEDOM highlighted significant JSTARS engine performance shortfalls. A lack of thrust and fuel efficiency combined to reduce mission operating altitudes and on-station times. The current TF33 engines are the number one driver of the Non-Mission Capable for Maintenance rate and are the leading cause of sortie aborts and code-3 landings. It is projected that re-engining will reduce the NMCM rate by 10 percent and positively increase the overall system Mission Capable rates by four percent. E–8C crews have also experienced several instances of engine over temps on takeoffs, which have mandated reduced thrust takeoffs. Re-engining JSTARS makes sense operationally and from a sustainability perspective.

We have included language in the report accompanying this bill that states should the Secretary of Defense recommend in his report that a re-engining program be pursued for the E–8C, the committee encourages the Air Force to initiate this program, taking into account the recommendations of the Secretary's report on how best to implement it. I am optimistic that the Air Force report will be delivered to the committee in the near term. I am hopeful that as our bill moves from floor consideration and to conference with the House, we can work to ensure that this re-engine initiative is given every consideration based on the data and analysis provided for our consideration.

There are many aspects to consider in taking care of our soldiers, sailors, airmen and marines who are sent into harm's way. In times like these, preserving the assets that help to ensure the well-being of our men and women

in uniform should be given the investment necessary to see that the equipment is the best that we can provide and at the best value for our armed forces.

Mr. WARNER. I thank the Senator from Georgia for his leadership on this issue, and I look forward to working with him on this important issue.

Mr. CHAMBLISS. We owe it to the men and women who crew the E–8C JointSTARS to ensure that these aircraft are powered by engines that provide desired safety margins and on-station operating times that accomplish the aircraft's mission without degradation. At the same time we owe it to the taxpayers of this Nation to ensure that these aircraft are powered by engines that are fuel efficient and supportable for our armed forces.

COMPETITIVE SOURCING

Mr. THOMAS. Mr. President, I would like to take a moment to engage with the distinguished Senator from Virginia regarding some of the measures included in this very important bill. First, I want to commend the Senator from Virginia for his tireless efforts in managing this bill. He is always very fair and considerate, and his outstanding leadership is appreciated.

Mr. President, I am concerned that some amendments adopted by Unanimous Consent may have a negative impact on the President's Competitive Sourcing Initiative, and ultimately adversely impact the President's ability to administer the bureaucracy of the Department of Defense. As a longtime supporter of a more accountable and responsible federal government, I strongly support President Bush's competitive sourcing initiative which seeks to improve the way federal agencies operate. However, I recognize how critical it is in these times of war that we move this bill quickly and not allow it to be held up further by partisan politics. So I do not object to accepting these measures in the larger interest of getting a Defense bill through the Senate.

Every president for the last 50 years, Republican and Democrat alike, has endorsed the elimination of commercial functions in the federal workforce, but their plans were not vigorously implemented or enforced. As a result, nearly half of today's civilian federal workforce is doing work that could be done more efficiently by the private sector.

Mr. WARNER. I believe we looked to remedy this with the FAIR Act in 1998. Am I not correct in stating that this law basically says that federal agencies should inventory government services that are commercial in nature, and then review whether these activities should continue to be performed in the public sector?

Mr. THOMAS. That's correct. The Clinton Administration did the first inventory and found that more than 850,000 Federal employees out of 1.8 million were in jobs that were commercial in nature. The federal government was paying individuals to do jobs that could also be found in the Yellow Pages. Unfortunately, the Clinton Administration did not follow up. These positions should have been reviewed and solutions explored to return these jobs to where they belonged—the private sector. Unfortunately, there were no follow up reviews. It was only when George W. Bush was elected that a program was implemented to actually do the reviews of these 850,000 positions. Competitive sourcing could then be employed to see if it would be more effective and accountable to have these activities performed by the private sector.

Contrary to misinformation by some of our colleagues and labor unions, competitive sourcing is not about eliminating or privatizing federal workers. Simply put, competitive sourcing, which relies on the A–76 Circular for public-private competitions, is a useful tool that allows federal agencies to evaluate whether or not commercial functions should be performed in the future by federal employees or the private sector. As it is now, many federal employees who work in commercial functions are stuck in inefficient bureaucracies performing activities that are non-inherently governmental.

The competitive sourcing process is good government. As numerous independent reports to Congress have shown, competitive sourcing saves taxpayers between 10 to 40 percent—regardless of who wins. The record is that every position reviewed by competitive sourcing shows savings regardless of whether that position stays in-house or gets contracted. Federal employees win an overwhelming majority of the competitions. But clearly, the taxpayer is the real winner in this process. Inefficient monopolies that waste taxpayer dollars and divert much-needed federal resources from our government's most pressing programs should always be examined. There are activities which are inherently governmental, and should be performed by the government. No one would argue this. However, government should not be engaged in activities which are already offered in the private sector. As we look for ways to reduce its size, cost and scope, we need always remember that government should be the provider of last resort with the free enterprise system being the provider of the first choice. To do otherwise is a disservice to the American taxpayer. Would the Senator from Virginia agree with us?

Mr. WARNER. Mr. President, I certainly agree with my friend from Wyoming that we should continue to evaluate the way the federal government operates. Competitive sourcing is an important tool available to the government to ensure that high quality governmental services are acquired at the lowest cost to the taxpayer.

I believe the Senator wanted to share some of his concerns with an amendment offered by the Senator from Massachusetts and the Senator from Georgia.

Mr. THOMAS. I do. The amendment offered by Senators KENNEDY and CHAMBLISS would all but eliminate use of the streamlined process contemplated under the revised Office of Management and Budget Circular A–76. This process applies to competitions of 65 or fewer full-time equivalents. By making the use of A–76 competitions arbitrary, as opposed to strategic, the Department of Defense's necessary flexibility in procurement is removed. The amendment also includes provisions designed to give in-house employees unfair advantages over the private sector in the competitive sourcing process and makes it difficult for small businesses to be competitive in job contests.

Unfortunately, with the country at war, I'm afraid that these measures would be very counterproductive, costly, and present unnecessary hurdles for the Department in this very crucial period of time. In fact, the Administration, in a statement of administration policy issued by OMB, has declared its opposition to any final defense measure that limits DOD's competitive sourcing flexibility. The White House has, in fact, threatened to veto this bill if it contained these provisions. I am sure the distinguished Senator from Virginia is well aware of the importance the President places on this issue.

Mr. WARNER. Yes, I am. I certainly understand the Senator's concerns, and I can tell him that I am hopeful that as we move forward and reconcile this very important bill with that of the House in conference, we will take a very careful look at these measures and work out acceptable language that will not burden the DOD or hamper the President in his role as administrator of the federal bureaucracy in these critical times.

Mr. THOMAS. I think it is very important that we revisit these proposals. In the interest of moving this defense bill in a time of war, we have forgone an important debate. So I thank the Chairman for his attention to this matter and again say to him that I appreciate his strong leadership.

MANUFACTURING EXTENSION PARTNERSHIP

Mr. KOHL. Mr. President, Senator REED and I filed an amendment to ensure the soundness of our Nation's defense supply chains through the support of the Manufacturing Extension Partnership, MEP, Centers. We would like to thank our colleagues, Senators WARNER, LEVIN, GREGG, HOLLINGS and MCCAIN for accepting the modified amendment. Senator REED and my amendment clarifies that the Department of Commerce has the ability to transfer and reprogram $21.8 million to the MEP Program in fiscal year 2004.

The vitality and viability of our Nation's small manufacturers has tremendous consequences for our Nation. Without a strong manufacturing base, we risk losing wealth for our Nation,

we risk good jobs for our citizens, and we risk irreparably harming our Nation's defense supply base at a critical time.

The MEP assists America's small manufacturers and helps boost productivity, sales, investment in modernization, and employment. I have a very simple, but vital, message to deliver—manufacturing matters—MEP matters. But I am worried that President Bush does not understand this simple message. This fiscal year 2004, the administration's budget slashed the MEP Program by 88 percent. Due to the efforts of Senators GREGG and HOLLINGS, the Senate fiscal 2004 appropriations bill restored funding for the program to $106 million. However, the Omnibus Appropriations Act for fiscal year 2004 reduced that level to only $39.6 million.

As a Federal-State-private partnership, MEP is a network of over 60 centers with 400 locations across the country and Puerto Rico providing technical assistance and business support services to small manufacturers. These not-for-profit centers employ more than 2,000 professionals who work with manufacturers to help them adopt and use the latest and most efficient technologies, processes, and business practices. As a result, our small manufacturers are better able to compete with low wage countries, maintain jobs in America, and continue driving a higher standard of living in the U.S. In fiscal year 2002, MEP's clients reported sales of $2.8 billion, 35,000 new or retained workers, $681 million in cost savings, and $941 million invested in new plant and equipment as a direct result of their MEP projects.

However, funding constraints and budget cuts have forced every MEP Center in the country to downsize. According to a recent Modernization Forum survey, MEP Centers have closed 58 regional offices and reduced staffing by 15 percent, which will leave small manufacturers across the country without the invaluable technical and business assistance that helps them remain competitive edge in the global marketplace.

Senator REED's and my amendment will help address this issue by clarifying that the Secretary of Commerce can reprogram $21.8 million to the MEP Program this year. Fifty-five Senators requested that the Secretary reprogram funding to the MEP Centers this year. Unfortunately, the Department refused this request; leaving the MEP Centers and small manufacturers without the resources they need. In a response to the Senate request for reprogramming, Secretary Evans implied that the Department of Commerce does not consider it worthwhile to reprogram funding to the MEP program because the appropriations act would only allow the transfer and reprogramming of $3.9 million. In discussions with the Appropriations Committee and the Congressional Research Service, however, this appears to be a very narrow reading of the statute by the Department of Commerce. The appropriate level of funding that can, and should, be transferred and reprogrammed is $21.8 million. This amendment clarifies that level of funding for transfer and reprogramming.

The administration needs to make resources available to help our Nation's small manufacturers. That is why I, along with my colleague Senator REED, continue to call on the administration to reprogram $21.8 million to support the MEP Centers this year. And we call on the administration to send a Budget Amendment to Congress to support $106.9M for the MEP Program in fiscal 2005.

Mr. REED. Mr. President, I thank my colleagues Senators WARNER, LEVIN, GREGG, HOLLINGS and MCCAIN for working with Senator KOHL and I on this important amendment preserving the Manufacturing Extension Partnership, MEP, Program. I particularly want to thank Senators HOLLINGS and GREGG for their strong support of the MEP Program and their efforts to restore funding to a program that is vital to our Nation's small manufacturers. I look forward to working with them this year to ensure funding is restored in fiscal year 2005.

Senator KOHL and my amendment clarifies that the Secretary of Commerce has the ability to transfer and reprogram $21.8 million to the MEP Program this fiscal year in order to assist our nation's small manufacturers. Senator GREGG, HOLLINGS, KOHL and I believe that the Secretary already has the ability to transfer and reprogram this funding; however, rather than honor the request of 55 Senators and work with the Senate and Congress to help reprogram funds, the Department of Commerce has chosen to hide behind a legal interpretation that it lacks such authority.

Small manufacturers have a direct impact on national security. Small manufacturers are the backbone of our defense production capacities. Firms with fewer than 500 employees comprise more than 80 percent of the defense supply chains. Small businesses are responsible for a significant share of defense contracting. They receive 21 percent of prime contracts and 41 percent of the subcontracts awarded to businesses by, or on behalf of, the Department of Defense.

The National Coalition for Advanced Manufacturing in a 2002 report identified five key challenges that confront the defense industrial base. First, the loss of small and medium-sized firms that participate in the defense supply chain is taking its toll on our Nation's defense readiness as many makers of components and spare parts for the larger defense contractors have left the marketplace or are ill-prepared to respond to swift increases in orders. There is no known source of supply for over 11,000 products used by the Department of Defense. Second, our Nation needs to maintain sufficient surge production capacity to meet unanticipated national defense needs. The production of platform systems, components and munitions is constrained by the surge capacity of prime contractors and the capabilities of the supplier base. Being able to provide for these defense needs is vital to our military. Third, outdated and aging manufacturing systems and processes are involved in the production of major weapon systems. The need for quality and technology improvements along with increased productivity and cost reduction makes the shortage of capable small manufacturers more problematic. Fourth, large defense companies often have the knowledge and resources to make investments in productivity and efficiency improvements; however, small manufacturers frequently lack the necessary technical knowledge, staff and resources to take advantage of new techniques and technology. Lastly, to increase participation in defense production, small manufacturers need assistance adapting commercial production practices and techniques to the needs of the defense industrial base.

The MEP program can help our Nation address these challenges. MEP Centers have a strong track record of solving supply management issues. MEP helps preserve and strengthen domestic production of unique defense technologies and provides a strong strategic edge over threats to national security. MEP is active within U.S. defense supply chains assisting small subtier suppliers to cut costs, boost productivity, integrate technology and accelerate delivery times. Officials from Boeing, General Dynamics, Lockheed Martin, Northrop Grumman, and Raytheon expressed their reliance on MEP for cost and quality improvements at small manufacturing firms on which they rely for component parts and assemblies.

To date, the actions of the Department of Commerce have been unacceptable. The administration needs to make resources available to help our Nation's small manufacturers. The administration should immediately reprogram $21.8 million to support the MEP Centers this year as directed by Senator KOHL and my amendment. Given the broad bipartisan and national support for this program, the administration should send a Budget Amendment to Congress to support $106.9M for the MEP program in fiscal 2005.

FUEL CELL PROGRAM

Mr. AKAKA. Mr. President, I wonder if I might discuss an important matter with the Chairman of the Armed Services Committee regarding the program to advance fuel cell technology for support of armed forces.

Mr. WARNER. Mr. President, I would be happy to discuss this issue with the Senator from Hawaii.

Mr. AKAKA. Mr. President, the Senate report accompanying National Defense Authorization Act for Fiscal Year 2005 included language on a program to

demonstrate proton exchange membrane (PEM) fuel cell designs at Department of the Navy installations. In particular, the language referred to an uninterruptible substation using fuel cells based on proton exchange membrane technology. This was a program that the Congress supported last year.

I believe that the program the Committee intended to support this year was somewhat more narrowly focused on the developing technology to improve the membranes for those fuel cells that might be used in the substation program that was the subject of discussion last year or for other important Defense Department applications.

Mr. WARNER. Mr. President, I agree with the Senator from Hawaii that improving the membrane technology for fuel cells was the program for which the Committee recommended an addition to the Defense authorization this year.

Mr. AKAKA. Mr. President, I thank the chairman of the Committee for clarifying this situation.

Mr. BENNETT. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. Mr. President, what is the parliamentary situation?

The PRESIDING OFFICER. The DOD authorization.

Mr. HATCH. Thank you, Mr. President. That is what I want to talk about today, in part.

I rise today to respond to a few of the comments made yesterday by several of my Democratic colleagues. They have attacked the President and the administration for not being forthcoming in releasing documents notwithstanding the fact that the White House just declassified and released approximately 260 pages of legal memoranda that they sent to Senator LEAHY and myself.

Let me take a moment to review the history.

On June 8, 2004, the Judiciary Committee held an oversight hearing of the Department of Justice. During the course of the hearing, Senator KENNEDY asked the Attorney General for any legal memoranda that had been leaked to the public. Contrary to the suggestions of some, the Attorney General at no time refused to answer any question posed by Senators on the committee. He just gave answers with which my Democratic Colleagues did not agree.

Specifically, the Attorney General declined to agree—on the spot—to produce internal executive branch legal memoranda citing the President's right to have confidential advice from his staff. The Attorney General believed he did not have authority to release these documents. He believed that only the President could release them.

Instead, that same day after the hearing, the Department of Justice wrote a detailed letter responding to the inquiries of the ranking Democratic member of the Judiciary Committee on legal issues related to wartime decisions. The letter summarizes the Justice Department's legal opinion on whether various statutes and treaties apply on this war on terror, including the Uniform Code of Military Justice, the Special Maritime and Territorial Jurisdiction, the Military Extraterritorial Jurisdiction Act, the torture statute, Geneva Conventions, and the War Crimes Act.

These topics are precisely the subject matter of the documents at issue in the hearing. The Attorney General is not trying to cover up anything. There can be no question that the Justice Department wanted to be responsive to the committee but it was not in a position to release the documents without further consultation within the administration, including the White House and the Defense Department. That is only fair. It is prudent during time of war when some of the documents reveal potential interrogation techniques.

Yet they made the Attorney General of the United States a punching bag, which they have done consistently day in, day out in the Judiciary Committee on various markup days and hearings as well.

It is as though they literally hate the Attorney General of the United States. A man who I think is doing a bang-up, tremendous job. In fact, last week the Attorney General and the White House counsel both assured me that they would work with me to fairly resolve the matter. I represented that to the committee members and that wasn't enough. I was sarcastically challenged on that by more than one member of the committee on the Democratic side. I just calmly said: Give them a little time. They said they would work with us, and they will. And Mr. President, they did.

Last Tuesday, the Democratic members of the Judiciary Committee submitted a letter to the Attorney General, not just seeking the three documents mentioned at the hearing that Senator KENNEDY made an issue of in the hearing, but seeking a total of 23 legal memoranda.

In addition to that, they provided a laundry list of document requests so broad that it could take a year to search the files of the entire Federal Government to comply with such a request. We would have to go all the way back to the Spanish-American War to give every document that has ever been brought forth, if you followed the kind of reasoning that they had.

Let me give you some examples. They asked for ''any other memoranda or documents from Alberto Gonzales, William Haynes, William Howard Taft, IV, or any senior administration, and in the possession of the Department of Justice, regarding the treatment or interrogation of individuals held in the custody of the U.S. Government.''

Any other senior administration official? That involves hundreds, if not thousands, of people. Come on.

For each of the 23 requested memos, the Democratic Senators wanted to know what has been redacted and why. They want an explanation for each classification status, and they want an indication of to whom each was circulated with copies of all cover letters and transmittal sheets.

When is it going to end? That kind of stuff is way out of bounds. It was an incredibly imprudent request. It was so broad that nobody in his or her right mind would try to fulfill it—and certainly not a White House that is responsible.

In addition to the 23 requested memos, this request includes 19 other broadly worded questions that require lengthy investigation and responses. They want all of this by June 30. That is in just 15 days, as if they were entitled to all of that.

This document request appears to be an old-fashioned fishing expedition of the lowest order. Any objective observer would have to conclude that this is not a legitimate exercise of our oversight function. They just want to use the typical go-to-the mattresses, scorched earth, litigation-like tactics to bury the Attorney General with a request so broad that no one could possibly comply with it.

Last Wednesday, before the ink was dry on the document request letter submitted last Tuesday, the ranking minority member circulated a proposed resolution to formally subpoena documents from the Department of Justice.

The Democrats did not even give the Attorney General the courtesy of a few days to respond to the original document request.

Yet, while the Democrats were engaging in this conspiracy, I was working with the White House and the Department of Justice. I told the entire committee of all my efforts last week. In fact, it is because of my efforts and the efforts of the President and the Department of Defense and the Justice Department that these documents have been declassified and disseminated so quickly.

Significantly, the three documents originally at issue in the Attorney General's hearing have been produced—that is, the actual documents that they called for in the hearing where you heard so much bad-mouthing of the Attorney General.

I got the cooperation of both the Attorney General and Alberto Gonzales himself last week.

I have put up with continual complaints by our friends on the other side of the aisle on the Judiciary Committee as to how poorly the committee is being run. I am sick and tired of it.

It is about time we got rid of some of these snotty, ridiculous, demeaning,

and below-the-belt type of tactics and start respecting the President of the United States, the Attorney General, the Secretary of Defense, our young men and women overseas, and quit undermining what they are doing. We gave them the three documents they asked for and now there are all kinds of requests for more. We will never satisfy these types of voracious, problem-seeking people.

Of course, it is not good enough for some of my colleagues to just give them the documents they asked for. The administration could have sent 1,000 memos and some of my Democratic colleagues would still not have been satisfied. Talk about transparency, their strategy is transparent. No matter what is sent, some will no doubt scream and complain it is not good enough, and they will get on this floor, with their holier-than-thou language, and say we must have transparency because that is the way we in the United States are.

If that is true, we do not need the CIA, we do not need the 15 intelligence agencies, and we do not need to protect our young men and women overseas anymore. We just have to have transparency. That is so ridiculous it is hard for me to believe how the American people can even give any kind of consideration to that kind of talk. Yet we are getting that kind of nonsense on the Senate floor almost constantly from people on the other side of the aisle.

This lack of good faith suggests this is more about trying to attack the Attorney General and the administration than about obtaining documents necessary for legitimate exercise of oversight. It is clear they want to subpoena to build a case to hold the Attorney General in contempt of Congress. Why they hate this former Member of Congress, this former Member of the Senate, I will never understand. There is not a more decent, honorable, religious, kind person I know than John Ashcroft, but he is being treated like dirt. This threatens to rapidly devolve into a political witch hunt of the worst order.

It is sad to see this blatant political posturing. It is particularly sad to see this uncalled-for partisan wrangling over an issue of national security in an election year. I don't think they are fooling anybody by their histrionics, and we sure had a lot of them over the last number of days—even the last couple of weeks. Really, you can go back in time, ever since President George Bush was elected.

The amendment offered yesterday by the Senator from Nevada and the amendment offered here is not limited to the three documents that were at issue in the hearing. Those documents have already been produced. It has not been limited to the 23 documents listed in the first part of their document request. It is a broadly worded subpoena that would encompass all documents and records on this subject since January 20, 2001, regardless of whether the documents were written by someone at the Department of Justice.

Talk about a fishing expedition, we are talking here about deep sea fishing—and the worst type. Do you know how many people work at the Department of Justice? It would take forever just to ask each of the 112,000 individuals at the Justice Department if they possessed any relevant documents. That is how ridiculous the request is.

Moreover, the Justice Department subpoena is poorly written, as I have been saying. It requests all documents and records ''describing, referring, or relating to the treatment or interrogation of prisoners of war, enemy combatants, and individuals held in the custody or physical control of the United States Government . . . in connection with the investigation of terrorist activity.'' And the subpoena is not limited to Justice Department records but also records possessed by the Department of Justice, written by other agencies, including the CIA or any military branch. This is simply too broad and they know it.

In addition, the subpoena requires records relating to the treatment of prisoners. That broad term would appear to include all the interrogation or treatment records and all of the medical records of Zacarias Moussaoui and any other individual DOJ has prosecuted or is prosecuting on terror-related charges subsequent to 2001. This could include any interrogation, medical records shared between the Department of Defense and the FBI relating to detainees held at Guantanamo Bay or in Iraq, Afghanistan, or elsewhere. This information request can involve hundreds, if not thousands, of POW and other enemy combatants and hundreds of thousands of pages of records.

That is the type of base political activity that is going on in this body right now. It demeans, insults, and undermines our young men and women overseas fighting for us and risking their lives every day. I, for one, am sick and tired of it. I hope the American people wake up to this type of foolish conduct all in the interest of Presidential politics or just politics in general.

I don't see the practical utility of providing all of these records pertaining to individual detainees to the Judiciary Committee. Under the proposed subpoena, this information could conceivably include prosecution strategy memos. Can you imagine? Surveillance materials. Can you imagine? Information provided by and the identities of confidential informants. Can you imagine that? As well as FISA, that is, the Foreign Intelligence Surveillance Act materials. We normally do not get these types of documents in either Democrat or Republican administrations. And there is a good reason. Because this place is a sieve. You can't keep anything secret up here. It is easy to see why administrations do not like to give confidential, secret, or top secret or covert information, you name it, classified information, to people up here.

Their language is simply too broad. I am also troubled by the way in which the language appears to stray far away from general policy questions concerning the legal status of certain classes of detainees such as suspected al-Qaida members into matters affecting ongoing intelligence gathering and the prosecution of individual terrorist subjects.

Give me a break. Let's give our country a break. Let's give our President a break. Let's give our Attorney General a break. Above all, let's give our young men and women overseas a break from these types of partisan, political activities.

Let me say when the shoe was on the other foot, the Democrats have advocated just as I have. Four years ago, when President Clinton was in office, my colleague from Vermont, advocated the following practice:

> Our standard practice should be to issue subpoenas only when attempts to obtain documents by other means have failed. At a minimum, we should at least request documents in writing before attempting to compel their production. . . . As part of this duty, the Committee should take every reasonable effort to see whether subpoenas are actually necessary before publicly requesting them.

That is the distinguished ranking member of the Judiciary Committee from Vermont speaking. Let's go through that one more time. When the shoe was on the other foot, and our side was asking for some documents, the quote was:

> Our standard practice should be to issue subpoenas only when attempts to obtain documents by other means have failed.

That is a quote.

The fact is, they didn't even give the Attorney General time to even think about it before they were slapping a subpoena down in last week's markup, just a few days after. And then, four years ago my colleague from Vermont continued:

> At a minimum, we should at least request documents in writing before attempting to compel their production.

I guess 2 days in writing is more than an ample request in their eyes now that they are in the minority and now that John Ashcroft is Attorney General.

> As part of his duty, the committee should take every reasonable effort to see whether subpoenas are actually necessary before publicly requesting them.

No, they pursued a subpoena. We had to vote on it. It was a party-line vote. I guess they thought they could get at least one Republican to allow their nefarious scheme to go forward. They did not try to use every reasonable effort to see whether subpoenas were actually necessary. And I am sure the reason, they will say, is because John Ashcroft has not appeared before the committee in a long time.

My gosh, the man almost died this year. And I don't blame anybody for

not wanting to come up in front of this bunch when all you do is get demeaned, with implications that you are a liar, that you are not cooperative, that you are not doing a good job, and many other implications, as well, that are derogatory in nature.

When are we going to start treating administration people with respect and dignity? Here the Democrats are not making any reasonable effort to attempt to obtain any of the documents by other means. They did not even give the Justice Department a day to respond to their written questions before drafting a subpoena. What kind of bullying tactic is that? We know what the Democrats are up to because the Senator from Vermont told us what the purpose of a subpoena was just 4 years ago.

He said:

[I]ssuing subpoenas may make for a good show of partisan force by the majority but certainly continues the erosion of civil discourse that has marked this Congress. Why is that true then but not now? Let me suggest that my Democratic colleagues are trying to take this one step further, as well. The minority is attempting to make a show of partisan force by distorting the facts for the American public.

Especially where the administration has indicated its willingness to be cooperative, issuing a subpoena would not merely continue the erosion of civil discourse; it would accelerate it by exponential proportions.

To suggest that the Senate issue a subpoena before the deadline to comply with a document request has even passed irreparably debilitates the credibility of my colleagues and shows they are merely grandstanding and not pursuing a legitimate oversight function, in spite of the holier-than-thou approach that some of them use.

Now, we have seen holier-than-thou approaches on both sides, I suppose, but I have never seen it worse than it is right now.

Yesterday, the President released not only the three documents at issue in the DOJ oversight hearing but 260 pages of documents, at my request—something I said I thought I could get them to do, after having talked with the Attorney General of the United States and Judge Gonzales. That was not good enough at the time. They were moaning and picking and groaning at me, saying they would never do it. But they did.

Thus far, the administration has released 13 lengthy memoranda relating to the treatment or interrogation of detainees, including relevant documents that were not specifically requested by the committee.

Come on. This administration has bent over backwards, and they will never satisfy these naysayers on the other side who want to make political points and who want to damage the Attorney General of the United States, the Secretary of Defense, and, above all, the President of the United States. I have to say, they are really good at playing this political game. They have a lot of help in our media in this country that seems to just go right along with it.

This may not be the end of the document production by the Departments of Justice and Defense, et cetera. The Department of Justice has until June 30, 2004, to respond to the Democrats' document request. It may well be that after June 30, 2004, there may be additional documents that we will need to see. But to seek such a broadly worded subpoena prematurely makes absolutely no sense. It flies in the face of reasonableness.

But let me say that it appears from what we know now—and I will expect the administration to correct me if I am wrong on this point—we have already gotten the most important documents. But I guess they just have not given the Democrats enough fodder with which they can attack the Attorney General and the President and others in this administration. After all, most of them were legal documents, legal opinions, where you can differ, and in most cases where they say, well, this is what the law is, but there is another side to it that could be argued, and the courts might find something to it. That is what you expect in a legal opinion. But they not only ask for the legal opinions; they ask for the preparatory documents that were leading up to the legal opinions.

I heard my colleague from Vermont mention, repeatedly: Like water, government policy flows downhill. I must say that I agree with him. Clearly, the most important document of those released by the White House is the one that the President of the United States signed on February 7, 2002. You do not get any higher than the President in this country, from a political standpoint.

In that memo, the President acknowledged that even though he was advised that he was not legally obligated to provide the protections of the Geneva Conventions to the Taliban or to the detainees at Guantanamo Bay, Cuba, that he intended to do so anyway.

But that is not enough for them. Here is the now unclassified White House memorandum for the Vice President, the Secretary of State, the Secretary of Defense, the Attorney General, the chief of staff to the President, the Director of Central Intelligence, the assistant to the President for National Security Affairs, the Chairman of the Joint Chiefs of Staff.

These are documents that are usually never given up by Presidents, by the way.

The subject: ''Humane Treatment of al Qaeda and Taliban Detainees.'' The part shown at the bottom on this page of the letter is in yellow. Let me read the paragraph just above that. Let me read No. 2:

Pursuant to my authority as Commander in Chief and Chief Executive of the United States, and relying on the opinion of the Department of Justice dated January 22, 2002, and on the legal opinion rendered by the Attorney General in his letter of February 1, 2002, I hereby determine as follows:

Now, this is a finding, by the way:

a. I accept the legal conclusion of the Department of Justice and determine that none of the provisions of Geneva apply to our conflict with al Qaeda in Afghanistan or elsewhere throughout the world because, among other reasons, al Qaeda is not a High Contracting Party to Geneva.

I think that sounds pretty logical to a logical person. But look at this:

b. I accept the legal conclusion of the Attorney General and the Department of Justice that I have the authority under the Constitution to suspend Geneva as between the United States and Afghanistan, but I decline to exercise that authority at this time. Accordingly, I determine that the provisions of Geneva will apply to our present conflict with the Taliban. I reserve the right to exercise this authority in this or future conflicts.

There is good reason why he reserved the right to exercise this authority—a very good reason—and that is, we are not fighting a conventional war; we are fighting a war in the most unconventional way, against people who do not wear uniforms, who do not represent a particular country, who are helter-skelter all over the world, who are vicious, brutal killers and murderers and terrorists, who have more than shown us how vicious they are. They do not deserve, in the eyes of many legal minds, the type of protections that Geneva would provide. But he is going to provide it to them anyway.

But that is not good enough over here. They have to find something, in some documents, in these hundreds of pages of documents, that can help to bring down this President.

Well, look, go to No. 3:

Of course, our values as a nation, values that we share with many nations in the world, call for us to treat detainees humanely, including those who are not legally entitled to such treatment.

Our Nation has been, and will continue to be, a strong supporter of Geneva and its principles. As a matter of policy, the U.S. Armed Forces shall continue to treat detainees humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva.

I do not know how you say it much more clearly than that. But you have read all the newspapers condemning the President. Yet the President is following Geneva. But he did. To hear the other side, you would think that he did not.

Look at No. 5:

I hereby reaffirm the order previously issued by the Secretary of Defense—

''[P]reviously issued by the Secretary of Defense''—

to the United States Armed Forces requiring that the detainees be treated humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva.

I do not know what my colleagues need further, but that is what the President signed. My gosh, there is the

President's signature right at the bottom of this letter.

I hereby direct the Secretary of State to communicate my determinations in an appropriate manner to our allies, and other countries and international organizations cooperating in the war against terrorism of global reach.

My gosh, what is this all about? I will tell you what it is all about. It is about politics, pure and simple. They cannot win fairly, so they do it by distorting what is going on.

If they could win by distorting, that would be great, hunky-dory for them, I suppose. Well, it is not for me.

Paragraph 2b:

I accept the legal conclusion of the Attorney General . . .

This is the fellow they are maligning all the time. This awful Attorney General, John Ashcroft. But he says:

I accept the legal conclusion of the Attorney General and the Department of Justice that I have the authority under the Constitution to suspend Geneva as between the United States and Afghanistan, but I decline to exercise that authority at this time.

He determines that the provisions of the Geneva will apply.

Of course, our values as a Nation, values that we share with the other nations in the world, call for us to treat detainees humanely . . .

The fact is some of our knuckleheads—darn few of them—have treated detainees inhumanely. You would think the President himself went over there and did those awful things, or that Donald Rumsfeld, who has done a fantastic job in helping to change the whole military structure in many ways in this country for the better, had gone over there and done this, or General Abizaid.

That letter blows away these types of phony arguments.

After hundreds of pages of analysis, after months of research and writing, the most severe punishment the Secretary of Defense authorized is the ''use of mild, noninjurious physical contact such as grabbing, poking in the chest with the finger and light pushing.''

I could tell you, having studied it, there is a whole panoply of acceptable Geneva interrogation techniques. I can tell you not all of them were used. The top level of very stressful ones were not authorized to be used.

Everything I have seen says that. Why this body would want to issue a subpoena that, one, failed in committee—they couldn't get it through committee because everybody there recognized it was a political exercise, brought very prematurely, without giving the administration a chance to comply, in disregard of the committee chairman's, my, offer to bring about a release of documents, and with a release of documents that is, by any measure, impressive—and two, is not ripe since the deadline to respond to the document request has not even come and gone. Why they would do that is beyond me.

I said earlier today I am one of the few people who has gone to and gone completely through Guantanamo. I can only speak for the time I was at Guantanamo and that was a few weeks ago. But I went and witnessed their interrogation techniques. I saw two interrogations that were not staged for me—one with a very uncooperative al-Qaida member they would occasionally get something from and another with another one who has been very cooperative because of the techniques that have been used, that have been fair and reasonable, within the Geneva Conventions rules and techniques. I saw how they handled the prisoners. I saw the incentive systems to get the detainees to try to cooperate.

I saw the assault record of some of these vicious detainees who I think some on the other side would like to coddle right to bed every night. Dozens of assaults made against our soldiers, including, since these are open wire cells, on a number of occasions throwing urine and feces all over the soldiers who have to walk up and down the halls.

I don't know about you, but if somebody did that to me, I wouldn't be very happy. If I recall correctly, there have only been three times where they have had to discipline soldiers because the rest of them stood and took it, even though that is one of the most offensive things that could be done to somebody, three times. One was acquitted, the other two suffered severe punishment.

In other words, we have punished our soldiers for getting mad because somebody threw feces and urine on them. I would be mad. I am for our soldiers. I wish—I am not going to second-guess the military courts, but I wish they had not been punished other than maybe reprimanded. There are some down there who are so vicious they would kill our soldiers if they had a chance. And they have done things like this repeatedly. Dozens and dozens of assaults on our young men and women down there.

What bothers me, almost more than anything else, is I have described one of the Presidential findings, and there are others that are being read on the sides of mountains by Zarqawi and by Osama bin Laden, top secret documents that have been given up because of these types of shenanigans. These types of things put our young men and women at risk. These political games are putting young men and women at risk. To disclose anything about interrogations puts our young men and women at risk. That does not mean we should not prosecute those who have violated the President's order of humane treatment. But interestingly enough, in the Abu Ghraib prison situation, the minute it became known these types of activities were going on, investigations started and prosecutions have resulted. But that is not good enough because there is a demand that they have to go right up to the top which means even the President, as if he were over there in Abu Ghraib himself, or Rumsfeld was over in Abu Ghraib or General Abizaid, they should be punished, or there should at least be some responsibility on their part for this aberration of conduct by so few in the Abu Ghraib prison.

Let me tell you, I am getting sick of it. I am getting sick of this partisan activity. I don't have much of a voice right now because I am so doggone sick of it. Frankly, it is beneath the dignity of the Senate. I think there might come a time for subpoenas, if there had been no cooperation, if there had been plenty of honorable time given to the administration to comply, if there had been no compliance, if there hadn't been any effort by the chairman to try and obtain these documents, if there had been no response by the White House counsel or the White House itself, or if there had been no desire on the part of the Attorney General to cooperate. They now have all the documents they asked for at that hearing. And now we get a request, a broad request for so many more that would tie up all of these important people to such a degree that I think it damages our young men and women not only in Iraq but Afghanistan as well.

Why? Why is it? Why do we hear these holier than thou rantings? Because we have to make sure this administration does its job because we don't trust them, I guess. At least that seems to be the tenor of the argument, and that this administration must be doing something wrong because it had legal memoranda and legal opinions that indicated maybe the Geneva Conventions don't apply in this unconventional war, with unconventional, murderous, and vicious terrorists.

Well, let me say, I am disappointed they ignore these types of documents. I am disappointed we get all these documents and they are not satisfactory. I am disappointed there is a call for transparency of all these things. I guess Osama bin Laden can read these things as well, or even Zarqawi, and know everything we are thinking, everything we do. He ought to be able to cut off a lot of heads with the knowledge we are giving him.

The fact is, almost any time anything is released here, it shows up in the liberal media. It shows up to the disadvantage of our country, to the disadvantage of our young men and women over there. I don't think anybody on this side is saying we should not be transparent in the ways we should be transparent, but to use that transparent argument and push it to its ultimate extreme means we should not have 15 intelligence agencies where we have classified information to protect our country. If you push it to the extreme, that is what you are saying. I believe it has been pushed to exactly that extreme.

I believe the demands have been extreme. They are unconscionable in some ways—not all of them. That is

why the documents are being given to them. It was important to meet the reasonable requests for those three documents. They have been given. I don't see anything wrong with that.

I also believe we ought to respect the need to keep some matters from transparency in the best interests of our young men and women. I have to say I know that not all of our servants act appropriately. Everybody makes mistakes. Certainly, the things that happened in Abu Ghraib and in Afghanistan should never have happened. They need to be investigated, and, where appropriate, prosecutions have to take place. Nobody should be spared who participated in those wrongful, illegal activities that fly in the face of what the President approved and what the Secretary of Defense approved. I stand with my colleagues on the other side with regard to that. There is no doubt in my mind about that.

But when it comes to just playing crass politics and demanding more and more so it can be released to the public so ''transparency'' can be had over documents that should not be released to the public, then I have to call it what it is. It is crass political activity that flies in the face of what is right. I think directly and indirectly it hurts our young men and women overseas.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. Mr. President, the chairman of the Judiciary Committee, my friend, has spoken for about 55 minutes, which leaves little time for the ranking member of the Judiciary Committee, the person going to offer the amendment. I will not offer a unanimous consent agreement until such time as the manager of the bill or someone from the majority is able to respond, but I am going to ask unanimous consent that the Senator from Vermont be allowed to speak until the hour of 9:45.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, I ask unanimous consent that the order be extended to allow the Senator from Vermont to speak for 15 minutes, and that following his speech, we vote on the pending amendment.

The PRESIDING OFFICER. Is there objection?

Mr. WARNER. Mr. President, we want to accommodate the Senator. Whatever happened, happened. We are glad to, in an equitable way, offer him this time. I will try to take the floor in the area of 9:40, if that is convenient.

Mr. LEAHY. How about 9:45?

Mr. WARNER. OK. Thank you.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I appreciate the continuing courtesy of my dear friend, the senior Senator from Virginia. I said earlier on the floor of the Senate that he and I have been friends for over a quarter of a century. I have aged in that time, but he has not. I do appreciate his continuing courtesies.

Mr. WARNER. I thank my colleague. We have served together these 26 years now in this body.

Mr. LEAHY. Mr. President, I have listened to some of the debate in the last 30 or 40 minutes, and it is sort of like a tempest in a teapot—a great deal of shouting and carrying on, but not really hitting the central point.

I spent years as a prosecutor. It was one of the best jobs I ever had. I had the great opportunity to try a lot of cases. I was in the courtroom several days every week in Burlington, VT. We had a saying there, as we do in many States, that if you have the facts on your side, you pound the facts. If you have the law on your side, you pound the law. Of course, if you have neither on your side, you pound the table. We have heard a lot of table pounding tonight.

The fact is that every American, Republican or Democrat, knows that some terrible things happened at Abu Ghraib prison. Some apparently happened in Afghanistan and some in Guantanamo. These are acts that are beneath a great and wonderful country such as the United States, a country blessed with a Constitution and laws and values that serve as a shining beacon for much of the rest of the world.

This did not happen here, and it is not answered by going out and cashiering a couple of corporals or a couple of privates and saying: There, look what we have done.

We all know that the 140,000 American men and women serving in Iraq and in Afghanistan and Guantanamo are obeying the laws, and upholding the best ideals of the United States. And many of our soldiers have been told they are going to serve much longer than their Government originally told them they would have to.

There are some, however, who did the same wrong things in Iraq as they did in Afghanistan and as they did in Guantanamo. Who gave them the green light? Don't tell me it is just a handful of bad actors. If so, those few bad actors must have a wonderful frequent flyer program to be able to show up in Abu Ghraib one day, Afghanistan the next, and Guantanamo the next. Somewhere there was some core permission given. It went to those who were willing to follow a wrong order.

My colleagues can table my amendment, but it will aid the coverup of what has become an international prisoner abuse scandal. If this amendment is tabled, as it may be, it says that the Republican Senators have decided to join the Republican administration in circling the wagons of the unfolding prisoner abuse scandal.

The American public—Republicans, Democrats, and Independents—are sick and tired of being lied to. They are sick of the secrecy. They are demanding answers all over this Nation, but the wagons continue to circle.

My amendment would require the administration to cooperate with a thorough congressional investigation into the abuse of prisoners in U.S. custody by releasing all documents relevant to the scandal. We call for the release of all relevant documents, not a tiny subset of documents selected by the administration when the political heat was on.

The question for us as Senators is, Are we content to see the Senate serve as an arm of the executive branch, or are there some of us—at least a majority of us—who actually read the Constitution and realize we are an independent branch of Government? The distinguished senior Senator from West Virginia has reminded us that we do not serve under Presidents, we serve with Presidents. He has reminded us that there are three branches of Government, each independent of the other. Nonetheless, we hear arguments on the floor that we can't ask for these documents because the executive branch does not want to show them to us. But, we are independent Senators, all 100 of us.

Somewhere in the upper reaches of this administration, a process was set in motion that seeped forward until it produced this awful scandal. So to put the scandal behind us—which all of us want to do—we have to understand what happened.

The President of the United States has said they want to get to the bottom of this. So do I, but you cannot get to the bottom of this until you have a clear picture of what is on the top. We have heard the party line on this scandal. The Senator from Alabama argued that the whole thing boils down to just a few people on the midnight shift in Abu Ghraib prison who got out of control. He said that a few people came in at midnight and somehow they got out of control. That line has become harder and harder to swallow as every day new evidence surfaces that the abuses were widespread.

The photographs may be limited to a small group of soldiers at Abu Ghraib, but the abuses were not. It is not right for any of us to claim this was just a small thing when every one of us has seen how extensive the photographs are, those that have been revealed to the public and those that have not.

I question the idea that it was only in Abu Ghraib. As I said, somebody must be getting frequent flyer miles because the same thing was happening at Abu Ghraib prison, Afghanistan, and Guantanamo. Just last week, a Federal grand jury indicted a CIA contractor for brutally beating a prisoner in Afghanistan in June of last year. Why did they indict him? Because the prisoner died the day after he was beaten.

The Army has opened a criminal investigation into injuries suffered by a U.S. soldier who was posing as an uncooperative detainee during training with military police at Guantanamo Bay. That soldier suffered traumatic brain injury. This was a brave American soldier who went into a training program. Suddenly, apparently, the rules changed, He used a code word to stop it. He said: I am an American soldier. They kept on doing what somebody higher up had given them the order to do, and he suffered traumatic brain injury.

I could go on and on about this. My point is, it is not just a few bad apples in Abu Ghraib. These things have happened in Afghanistan, Iraq, and Guantanamo. Does anybody seriously think that the American public is going to fall for a lie that it is a coincidence that a bunch of MPs in Iraq were abusing prisoners with the very same tactics that were being debated at the highest levels of Government, such as the use of hoods, the use of dogs, the removal of clothing? Do we think these people are somehow telepathic, that they can read the minds of those at the White House or the Pentagon?

Yesterday, the White House released a tiny subset of the materials we sought. This was not all the material we requested. It was a tiny subset. All of those documents should have been provided earlier to Congress. Much more remains held back from public view.

The documents that were released raised more questions than they answered.

After January 2002, did the President sign any other orders or directives? Did he sign any with regard to prisoners in Iraq? Why did Secretary Rumsfeld issue and later rescind interrogation techniques?

How did these interrogation techniques come to be used in Iraq even though the administration has maintained it followed the Geneva Conventions there?

Why is the White House withholding relevant documents produced after April 2003?

Where is the remaining 95 percent of the materials requested by members of the Senate Judiciary Committee?

We have heard on the floor there was a broad-brush request made for the documents. But it was actually a request for 23 specific documents. The White House gave 3 of the 23 and said that it had complied. Incidentally, of those three, two had already appeared on the Internet. The press had found them out before the White House gave them to us.

So even though they gave only one that had not been made public before, I will give them credit for all three. Where are the other 20?

When are we, as Senators, going to stop sitting on our hands, becoming a rubberstamp for an administration cloaked in secrecy?

We have the legal right, we have the constitutional obligation, and I remind Senators we have the moral authority to ask questions and demand answers today.

We have been blessed in this country with a great and wonderful country, but that is a blessing that comes with some responsibilities. We are not maintaining that responsibility unless we keep the pressure on, until we get honesty and we get answers.

So I urge my colleagues, vote down the motion to table. Let us show the Senate is willing to stand up. Let us do what Senators have done in the past. We did it during the Watergate era. We have done it at other times. Let us stand up and ask the questions the American public wants us to ask.

The press seems to be doing it for us. After extensive investigation, the Guardian uncovered widespread evidence of violent abuse and sexual humiliation of prisoners at Baghram and other U.S. detention centers around Afghanistan. We should have found that out, and we should have stopped it. As I said before, a Federal grand jury indicted a CIA contractor for brutally assaulting a detainee in Afghanistan June 2003. We should have found that out. Instead, we turned a blind eye.

Defense Secretary Rumsfeld admitted in November 2003 that he ordered a prisoner be held incommunicado, off the prison rolls, and out of the sight of the Red Cross. This ghost detainee got lost in the system for 7 months. Despite his high intelligence value, this ghost detainee received only a cursory initial interview while in detention.

Major General Taguba later criticized the practice of keeping ghost detainees as deceptive, contrary to Army doctrine, and in violation of international law.

The New York Times reported that military lawyers and some colonels received memos citing complaints of abuse at Abu Ghraib in November 2003, 2 months before photographic evidence of abuse prompted the military to launch an investigation. At the same time, the letters I had written to the Department of Defense and others about what we had heard were not answered.

In fact, it turns out now that the majority of detainees at Guantanamo Bay are not the worst of the worst, as the administration asserted, but rather low-level recruits or even innocent men swept up in the chaos of war. This is why, after years, not a single one has been brought before a military tribunal. This is not the mark of a great country. This is not the mark of a moral country.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. LEAHY. I ask unanimous consent that materials provided under the amendment be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

The materials provided under the amendment should include, at a minimum, the following:

(A) Memorandum for Timothy E. Flannigan, Deputy Counsel to the President, from John Yoo, Deputy Assistant Attorney General, Office of Legal Counsel, Re: The President's constitutional authority to conduct military operations against terrorists and nations supporting them (Sept. 25, 2001);

(B) Memorandum for Alberto Gonzales, Counsel to the President, from Patrick F. Philbin, Deputy Assistant Attorney General, Office of Legal Counsel, Re: Legality of the use of military commissions to try terrorists (Nov. 6, 2001);

(C) Memorandum for William J. Haynes, General Counsel, Department of Defense, from John Yoo, Deputy Assistant Attorney General, and Patrick F. Philbin, Deputy Assistant Attorney General, Re: Possible habeas jurisdiction over aliens held in Guantanamo Bay (Dec. 28, 2001);

(D) Draft Memorandum for William J. Haynes, General Counsel, Department of Defense, from John Yoo, Deputy Assistant Attorney General, and Robert J. Delahunty, Special Counsel, Office of Legal Counsel, Re: Application of treaties and laws to al Qaeda and Taliban detainees (Jan. 9, 2002), and any final version of this Draft Memorandum;

(E) Memorandum from William Howard Taft IV, Department of State Office of Legal Advisor, Re: Response to the January 9 Yoo/Delahaunty memo (Jan. 11, 2002);

(F) Draft Memorandum for the President from Alberto Gonzales, Counsel to the President, Re: Decision re application of the Geneva Convention on Prisoners of War to the conflict with al Qaeda and the Taliban (Jan. 25, 2002), and any final version of this Draft Memorandum;

(G) Memorandum for Alberto Gonzales, Counsel to the President, from Secretary of State Colin Powell, Re: Response to the Gonzales draft memo of January 25, 2002 (Jan. 26, 2002);

(H) Memorandum for John Yoo, Deputy Assistant Attorney General, Office of Legal Counsel, from James C. Ho, Attorney-Advisor, Office of Legal Counsel, Re: Possible interpretations of Common Article 3 of the 1949 Geneva Convention Relative to the Treatment of Prisoners of War (Feb. 1, 2002);

(I) Memorandum for Alberto Gonzales, Counsel to the President, from William Howard Taft IV, Department of State Office of Legal Advisor, Re: Comments on your paper on the Geneva Convention (Feb. 2, 2002);

(J) Memorandum for William J. Haynes, II, General Counsel, Department of Defense, from Jay S. Bybee, Assistant Attorney General, Office of Legal Counsel, Re: The President's power as Commander in Chief to transfer captured terrorists to the control and custody of foreign nations (Mar. 13, 2002);

(K) Memorandum for Daniel J. Bryant, Assistant Attorney General, Office of Legal Counsel, from Patrick F. Philbin, Deputy Assistant Attorney General, Office of Legal Counsel, Re: Swift Justice Authorization Act (Apr. 8, 2002);

(L) Memorandum for General James T. Hill from Defense Secretary Rumsfeld, Re: Coercive interrogation techniques that can be used with approval of the Defense Secretary (Apr. 2003);

(M) Memorandum from CJTF–7, Re: Applicability of Army Field Manual 34–52 and sensory deprivation (Sept. 10, 2003);

(N) Directive of Lt. General Ricardo Sanchez entitled ''Interrogation and Counter-Resistance Policy'' (Sept. 12, 2003);

(O) Memorandum from CJTF–7 on interrogations (Sept. 28, 2003);

(P) Memorandum for MI personnel at Abu Ghraib, Re: Interrogation rules of engagement (Oct. 9, 2003);

(Q) Memorandum for Commander of MI Brigade from Lt. General Ricardo Sanchez, Re: Order giving military intelligence control over almost every aspect of prison conditions at Abu Ghraib with the explicit aim

of manipulating the detainees' ''emotions and weaknesses'' (Oct. 12, 2003);

(R) Memorandum for Review and Appeal Board at Abu Ghraib from Detainee Assessment Branch (Nov. 1, 2003 through Jan. 31, 2004);

(S) Memorandum for MP and MI personnel at Abu Ghraib from Colonel Mac Warren, the top legal adviser to Lt. General Ricardo Sanchez, Re: New plan to restrict Red Cross access to Abu Ghraib (Jan. 2, 2004);

(T) Memorandum for Superiors from Maj. General Antonio Taguba, Re: Results of investigation into the 800th MP Brigade's actions in Abu Ghraib (Mar. 12, 2004);

(U) Memorandum from the Department of Justice, Re: Liability of interrogators under the Convention Against Torture and the Anti-Torture Act when a prisoner is not in U.S. custody.

(V) Review, study, or investigation report by LTC Chamberlain, Re: State of prisons in Iraq (addressing the high proportion of innocent people in the prisons and the lack of release procedures for detained Iraqis).

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. The distinguished Senator from Utah will address the Senate. We are ready to go to votes.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. I move to table the underlying Leahy amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion.

The clerk will now call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Kansas (Mr. BROWNBACK) and the Senator from New Hampshire (Mr. SUNUNU) are necessarily absent.

I further announce that if present and voting the Senator from Kansas (Mr. BROWNBACK) would vote ''yes.''

Mr. REID. I announce that the Senator from New Mexico (Mr. BINGAMAN), the Senator from South Carolina (Mr. HOLLINGS) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

The PRESIDING OFFICER (Mr. COLEMAN). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 45, nays 50, as follows:

[Rollcall Vote No. 143 Leg.]

YEAS—45

Alexander	Crapo	McConnell
Allard	Dole	Miller
Allen	Domenici	Murkowski
Bennett	Ensign	Nickles
Bond	Enzi	Roberts
Bunning	Fitzgerald	Santorum
Burns	Frist	Sessions
Campbell	Grassley	Shelby
Chafee	Gregg	Smith
Chambliss	Hatch	Snowe
Cochran	Hutchison	Stevens
Coleman	Inhofe	Talent
Collins	Kyl	Thomas
Cornyn	Lott	Voinovich
Craig	Lugar	Warner

NAYS—50

Akaka	Bayh	Boxer
Baucus	Biden	Breaux
Byrd	Graham (FL)	McCain
Cantwell	Graham (SC)	Mikulski
Carper	Hagel	Murray
Clinton	Harkin	Nelson (FL)
Conrad	Inouye	Nelson (NE)
Corzine	Jeffords	Pryor
Daschle	Johnson	Reed
Dayton	Kennedy	Reid
DeWine	Kohl	Rockefeller
Dodd	Landrieu	Sarbanes
Dorgan	Lautenberg	Schumer
Durbin	Leahy	Specter
Edwards	Levin	Stabenow
Feingold	Lieberman	Wyden
Feinstein	Lincoln	

NOT VOTING—5

Bingaman	Hollings	Sununu
Brownback	Kerry	

The motion was rejected.

AMENDMENT NO. 3485

Mrs. FEINSTEIN. Mr. President, I rise this evening in support of Senator LEAHY's second-degree amendment which seeks to compel, by law, the Executive Branch to provide certain important documents to Congress.

I wish to focus on one particular issue that has been raised by those who oppose this effort—that provision of these documents will endanger our national security by informing our enemies of the details of our interrogation tactics.

I believe this objection is misplaced and the danger of compromising national security can be easily and simply eliminated.

I am a member of the Select Committee on Intelligence, and as my colleagues know, that committee regularly receives information of the highest classification involving our Intelligence community. Similarly, the Armed Services Committee receives information about the most sensitive of our military secrets. The Judiciary Committee receives information about extremely sensitive law enforcement matters. In short, the Congress and its committees are regularly provided the most sensitive of our Nation's secrets.

In the present case I accept that some of the documents we have sought from the Department of Justice and Department of Defense about the law, policy and procedures governing interrogations may be properly classified. In other words, I quote from the governing executive order, Executive Order 12958, which describes ''top secret'' as being information ''the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security.''

But the question of classification is unrelated to the question of whether the Congress should have access to information which is needed. We have procedures, administered by the Office of Senate Security, which ensures that such information is handled properly, safely, and securely. simply put, providing information to the Congress is not the same as making it public, or providing it to terrorists.

As some of my colleagues know, I asked the Attorney General directly whether any of the material which he was refusing to provide to the Congress was classified. He did not answer my question, but if the answer is yes, then the Congress has the ability to receive such information.

It is important to focus on the issue at hand, which is what information should, and must, be provided to Congress so it can perform its constitutional role to legislate and conduct oversight. The issue is not what information to provide to the terrorists.

Mr. DURBIN. Mr. President, I rise today in support of the Leahy second-degree amendment. I am proud to cosponsor the Leahy second-degree amendment. The Leahy amendment would require the administration to provide the Senate with all documents in the Justice Department's possession relating to the treatment and interrogation of detainees.

Since the world learned about the horrible abuses at Abu Ghraib prison, there has been mounting evidence that high-ranking members of this administration authorized the use of interrogation tactics that violate our longstanding treaty obligations. There is increasing pressure on the administration to come clean and provide the Congress with all documents related to the use of torture.

Yesterday, in a transparent effort to stop the pressure for full disclosure, the administration provided Congress with a 2-inch stack of documents. But a cursory review of these documents reveals that the administration is withholding a lot of crucial information. If anything, the documents that were released yesterday make it even more clear that we need complete disclosure from the administration. As the Chicago Tribune reported today:

> The memos left unanswered at least as many questions as they answered. White House officials acknowledged that the documents provided only a partial record of the administration's actions concerning treatment of prisoners.

What do the documents that were released show? In a January 2002 memo, the President concluded that ''new thinking in the law of war'' was needed. Under our Constitution, it is Congress's job to make the laws. If the President wants to change the law of war, which has served our country well since the time of President Abraham Lincoln, he must come to the Congress and ask us, the people's representatives, to change the law. He cannot change the law by executive fiat. The memo from the President was stamped for declassification in 2012, so clearly this administration had no intention to consult with Congress or the American people about their plans to change the law of war.

In response to the President's mandate, in August 2002, the Justice Department sent a memo to the White House on the use of torture. It makes unprecedented claims about the President's power that violate basic constitutional principles. The Justice Department concludes that the torture statute, which makes torture a crime,

does not apply to interrogations conducted under the President's Commander in Chief authority. They also adopt a new, very restrictive definition of torture. They state that torture involves:

. . . intense pain or suffering of the kind that is equivalent to the pain that would be associated with serious physical injury so severe that death, organ failure, or permanent damage resulting in a loss of significant body function will likely result.

This contradicts what Attorney General John Ashcroft told the Judiciary Committee just 2 weeks ago. He said that it is Congress's job to define torture and that the administration had not adopted a new definition of torture.

The Defense Department, relying on the Justice Department's work, also responded to the President's call for new thinking about the law of war. In a November 2002 memo, Defense Secretary Rumsfeld approved the use of coercive interrogation techniques at Gauantanamo Bay. These included ''removal of clothing,'' using dogs to intimidate detainees, sensory deprivation, and placing detainees in stress positions, including forced standing for up to 4 hours. Rumsfeld's only comment on these procedures was a personal note at the bottom of the approval memo, ''I stand for 8–10 hours a day. Why is standing limited to four hours?''

Let me answer that question.

In the 1930s, Stalin's secret police forced dissidents to stand for prolonged periods to coerce confessions for show trials. In 1956, experts commissioned by the CIA documented the effects of forced standing. They found that ankles and feet swell to twice their normal size, the heart rate increases, some people faint, and the kidneys eventually shut down.

After military officers raised moral and legal concerns about the tactics Rumsfeld has approved, he rescinded his approval while the Pentagon conducted an internal review.

In an April 2003 memo, Rumsfeld issued revised rules. These allowed for interrogation tactics with truly Orwellian names. These included:

''Sleep adjustment,'' which the DOD claims is not the same as sleep deprivation;

''Dietary manipulation,'' which DOD claims is not the same as food deprivation; and

''Environmental manipulation,'' which DOD acknowledges ''some nations'' may view as ''inhumane.''

White House Counsel Alberto Gonzales said these memos show that the administration engaged in a ''thorough and deliberative process'' on interrogation practices.

There is just one problem: Congress was not involved in the process. Article 1 of the Constitution says that it is Congress that makes the laws, not the President. The President cannot change the law of war or the definition of torture. Only Congress can.

The memos that were released yesterday leave many questions unanswered. They include directives related to Defense Department interrogations of detainees at Guantanamo Bay. But they do not tell us what interrogation techniques were approved for use by the CIA or other government agencies. They do not tell us what interrogation techniques were approved for use in Iraq. Yesterday, White House Counsel Gonzales said, ''We categorically reject any connection'' between the Administration's torture memos and abuses at Abu Ghraib.

But how can the administration reject these connections when the techniques that Rumsfeld approved for use in Guantanamo were also used in Abu Ghraib prison? And what about the Justice Department torture memo? According to press reports today, the administration is now disavowing the memo.

But what does that mean? The memo was apparently vetted by the Justice Department, sent to the White House, and was the basis for the Defense Department's memos on torture.

Who requested the Justice Department memo and what was done in response to the memo? Were the legal arguments contained in the memo used to justify the use of torture?

Yesterday, the President said, ''We do not condone torture. I have never ordered torture. I will never order torture.''

What definition of torture is the President using? Is it the one that the Justice Department created? What about other forms of cruel treatment that are prohibited by the Constitution, treaties and laws of the United States?

This is a very serious issue for our Nation. The world is watching us. They are asking whether the United States will stand behind its treaty obligations in the age of terrorism.

The Senate has an obligation to the Constitution and the American people to answer these questions The only way to do that is to obtain all of the relevant documents from the administration.

The great challenge of our age is combating terrorism while remaining true to the principles upon which our country was founded—liberty and the rule of law. Our laws must not fall silent during time of war.

I urge my colleagues to support the Leahy amendment.

The PRESIDING OFFICER. The Senator from Virginia.

AMENDMENT NO. 3485

Mr. WARNER. Mr. President, the Senate now turns to the second-degree amendment and an up-or-down vote.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to Amendment No. 3485.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from New Mexico (Mr. BINGAMAN) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

Mr. MCCONNELL. I announce that the Senator from Kansas (Mr. BROWNBACK) and the Senator from New Hampshire (Mr. SUNUNU) are necessarily absent.

I further announce that, if present and voting, the Senator from Kansas (Mr. BROWNBACK) would vote ''no.''

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 46, nays 50, as follows:

[Rollcall Vote No. 144 Leg.]

YEAS—46

Akaka	Durbin	Lieberman
Baucus	Edwards	Lincoln
Bayh	Feingold	Mikulski
Biden	Feinstein	Murray
Boxer	Graham (FL)	Nelson (FL)
Breaux	Harkin	Nelson (NE)
Byrd	Hollings	Pryor
Cantwell	Inouye	Reed
Carper	Jeffords	Reid
Clinton	Johnson	Rockefeller
Conrad	Kennedy	Sarbanes
Corzine	Kohl	Schumer
Daschle	Landrieu	Stabenow
Dayton	Lautenberg	Wyden
Dodd	Leahy	
Dorgan	Levin	

NAYS—50

Alexander	Dole	McConnell
Allard	Domenici	Miller
Allen	Ensign	Murkowski
Bennett	Enzi	Nickles
Bond	Fitzgerald	Roberts
Bunning	Frist	Santorum
Burns	Graham (SC)	Sessions
Campbell	Grassley	Shelby
Chafee	Gregg	Smith
Chambliss	Hagel	Snowe
Cochran	Hatch	Specter
Coleman	Hutchison	Stevens
Collins	Inhofe	Talent
Cornyn	Kyl	Thomas
Craig	Lott	Voinovich
Crapo	Lugar	Warner
DeWine	McCain	

NOT VOTING—4

Bingaman	Kerry
Brownback	Sununu

The amendment (No. 3485) was rejected.

Mr. WARNER. Mr. President, I move to reconsider the vote.

Mr. DASCHLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3387

The PRESIDING OFFICER. The question is on agreeing to amendment No. 3387.

The amendment (No. 3387) was agreed to.

AMENDMENT NO. 3468

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. Mr. President, I believe the veterans health care amendment is next; is that correct?

The PRESIDING OFFICER. There are 2 minutes of debate evenly divided.

Mr. DASCHLE. Mr. President, one of the surprising aspects of the debate about the amendment now pending has been the testimonials from some colleagues who say they like the current VA funding system.

If you believe you can look veterans in the eye and tell them they are well

served by the current VA health care system, then my amendment is not for you.

If you are satisfied with telling 500,000 veterans they cannot enroll at the VA, then this amendment is not for you.

If you think the system is performing well that results in hundreds of thousands of veterans waiting months, sometimes years, to see a doctor to get prescription drugs, then vote no on this amendment.

If you feel good about voting to ask veterans to contribute more than a billion dollars out of pocket for their health care costs and send out the bill collectors to hunt them down and make sure it works, this amendment is not for you.

Lastly, if you think it is appropriate to ask hundreds of thousands of men and women to sacrifice everything for their country and not ensure that they can get access to health care when they return, my amendment is not for you.

Those considering opposing my amendment should take a look around. President Bush's own veterans health care task force, as well as the chairman and ranking member of the House Committee on Veterans Affairs, believe the current system is broken and that it urgently needs fixing and have endorsed the concept underlying this amendment. Every single veterans group in the country has done so as well.

If you believe we have an obligation to our troops, I urge you to back it up with action by voting for this amendment.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. NICKLES. Mr. President, I urge my colleagues to vote against this amendment. This amendment creates a new entitlement program, set up by a formula designed to add benefits based on eligible people. My father-in-law is eligible, but he doesn't receive VA benefits. Now we are going to set that up as an entitlement that would cost $300 billion—three-fourths of the cost of the Medicare bill expansion last year? We have a lot of people saying we believe in paying for these. This was not paid for. This would increase the deficit by $300 billion.

We are doing a lot for veterans right now. If you look at it, we didn't do a lot during the Clinton administration, but we have done a lot under the Bush administration—up 50 percent in the last few years. We are going from 2004, $61 billion, to $70 billion in 2005, a 15-percent increase. Yet some people say that is still not enough.

I think this amendment is not so much about helping veterans. I think it is trying to help politicians. I urge my colleagues to sustain the budget point of order.

The pending amendment offered by the Senator from South Dakota, Mr. DASCHLE, increases mandatory spending and, if adopted, would cause the underlying bill to exceed the committee's allocation section 302(a) allocation. Therefore, I raise a point of order against the amendment pursuant to 302(f) of the Congressional Budget Act of 1974.

Mr. DASCHLE. Mr. President, I move to waive the relevant sections of the Budget Act for my amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Kansas (Mr. BROWNBACK) and the Senator from New Hampshire (Mr. SUNUNU) are necessarily absent.

I further announce that if present and voting the Senator from Kansas (Mr. BROWNBACK) would vote ''nay.''

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 49, nays 48, as follows:

[Rollcall Vote No. 145 Leg.]

YEAS—49

Akaka	Dorgan	Lincoln
Baucus	Durbin	Mikulski
Bayh	Edwards	Murray
Biden	Feingold	Nelson (FL)
Bingaman	Graham (FL)	Nelson (NE)
Boxer	Harkin	Pryor
Breaux	Hollings	Reed
Byrd	Inouye	Reid
Cantwell	Jeffords	Rockefeller
Carper	Johnson	Sarbanes
Clinton	Kennedy	Schumer
Collins	Kohl	Snowe
Conrad	Landrieu	Specter
Corzine	Lautenberg	Stabenow
Daschle	Leahy	Wyden
Dayton	Levin	
Dodd	Lieberman	

NAYS—48

Alexander	Dole	Lugar
Allard	Domenici	McCain
Allen	Ensign	McConnell
Bennett	Enzi	Miller
Bond	Feinstein	Murkowski
Bunning	Fitzgerald	Nickles
Burns	Frist	Roberts
Campbell	Graham (SC)	Santorum
Chafee	Grassley	Sessions
Chambliss	Gregg	Shelby
Cochran	Hagel	Smith
Coleman	Hatch	Stevens
Cornyn	Hutchison	Talent
Craig	Inhofe	Thomas
Crapo	Kyl	Voinovich
DeWine	Lott	Warner

NOT VOTING—3

Brownback	Kerry	Sununu

The PRESIDING OFFICER. On this vote, the yeas are 49, the nays are 48. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. The point of order is sustained, and the amendment falls.

The Senator from Virginia.

Mr. WARNER. Mr. President, I move to reconsider the vote.

Mr. REID. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Virginia.

AMENDMENT NO. 3467 WITHDRAWN

Mr. WARNER. Mr. President, I ask unanimous consent to vitiate the action on the Ensign second-degree amendment No. 3467 and withdraw it. That is a technical requirement.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 3121

Mr. ALEXANDER. Mr. President, I have submitted an amendment that makes sure that military families don't lose eligibility for Head Start, the School Breakfast and Lunch Programs, Child Care and Development Block Grants, and the Low Income Energy Assistance Program when a parent is sent off to war.

Currntly, military families living on the margin, who qualify for Federal benefits, are at risk of losing those benefits if the service member in the family qualifies for special pay. If, for example, an active duty parent is deployed to a combat zone, and begins to receive additional combat pay, the temporary increase in income may result in his or her family losing eligibility for vital social services. My amendment would preclude additional military pay, specifically combat pay and the family separation allowance, from being counted as income for purpose of determining eligibility for certain federal benefits.

The Federal programs that are affected are those that are available to all Americans and where Federal law determines eligibility and generally provide food, child care, educational, and energy assistance to needy families. More specifically, the programs that would be affected are: The School Breakfast and Lunch Programs, Child Care and Development Block Grants, Head Start, and the Low Income Energy Assistance Program.

The Subcommittee on Children and Families, which I chair, in cooperation with the Armed Services Subcommittee on Personnel, chaired by the Senator from Georgia, Mr. CHAMBLISS, has put a special focus on helping military parents raising children. Together we have held six hearings since June of last year—five in the field, and one here in Washington. A number of issues have come to the attention of Senators through these hearings. This amendment addresses one of them.

Among the many military personnel I have head from during this process are Sergeant First Class Luis Rodriguez, his wife Lilliam, and their two young daughters. Sgt. Rodriguez, with the 101st Airborne, stationed out of Fort Campbell, and his family line in Clarksville, TN. When Sgt. Rodriguez and his family moved to Fort Campbell, they tried to get one of their daughters, who was 4 years old at the time, enrolled in their local Head Start program before Sgt. Rodriguez

was shipped out to Iraq. However, the Rodriguezes were informed that they couldn't access Head Start because they were over-income because of receiving the special pay. Sgt. Rodriguez left for Iraq and in November the truck he was driving in Mosul hit an improvised explosive device, and he lost most of his right leg. Currently, he is recovering down the road at Walter Reed Medical Center, and Lilliam is spending her time among traveling up here to see her husband, tending to her girls in Tennessee, and trying to help provide for her family. I am sure if you went to Walter Reed and talked to Lilliam or Luis, they would tell you that there is something wrong when those who wear our country's uniform and their families can no longer benefit from Head Start, the School Lunch Program, or some other federal program because they've become ineligible due to the additional special pay received when they're off in harm's way protecting our country.

I thank the distinguished chairman of the Armed Services Committee for his assistance in crafting this amendment. I look forward to continuing to work with the chairman on the issue of military families, and how best to help them shoulder the burdens they face.

We rely on our servicemen and women to defend our freedom and America's interests overseas, but at times, we forget that our soldiers have a support structure of their own: their families. We should do all we can to support our service members and their families in these tough times.

AMENDMENT NO. 3441

Mr. MCCAIN. Mr. President, why is this amendment needed? Congressional guidance is needed where the Air Force's conduct on its Tanker Lease Program has, to date, been unacceptable.

First, the Air Force has provided Congress inaccurate information in an attempt to justify its original proposal to lease 100 Boeing KC–767As. For example, Air Force Secretary Jim Roche has repeatedly advised Congress that, in the existing KC–135 fleet, ''corrosion is significant, pervasive, and represents an unacceptable risk.'' Secretary Roche has also emphasized to Congress increased operating costs in the current fleet as a basis for entering into the tanker lease. Air Force leadership has indicated that these elements create an ''urgent'' need to recapitalize the fleet. However, a Defense Science Board, DSB, task force found that the Air Force's claims of unmanageable corrosion problems and cost growth were overstated.

Remarkably, the task force recommended that corrosion not be cited as a justification for tanker recapitalization. As such, the task force concluded that ''[t]here is no compelling material or financial reason to initiate a replacement program prior to the completion of the [Analysis of Alternatives (AoA)] and the [Mobility Capabilities Study (MCS)].'' Thus, the task force jettisoned the ''dominant reason'' Secretary Roche first cited in his July 10, 2003, report to Congress as the basis for having taxpayers pay billions of dollars more for leasing tankers than they would for buying them. The Air Force's representations on this issue remains a matter of continuing investigative concern.

In another example, to comply with the original authorizing statute, the Air Force misrepresented to Congress that its proposal to lease 100 Boeing KC–767 tankers was merely an operating lease. This would have obviated the requirement that the White House obtain advance budget authority for the whole lease proposal. But, the DOD-Office of the Inspector General, OIG, and Program Analysis and Evaluation, PA&E, as well as the Congressional Budget Office, CBO, and the General Accounting Office, GAO, found that the procurement of these tankers is, in fact, a lease-purchase. In addition, facts surrounding the original lease proposal made it clear that the transaction was a lease-purchase: under the original proposal, the Air Force conceded that the DOD is ''committed to earmark[ing] an additional $2B in fiscal year 2008 and fiscal year 2009 for the purchase of aircraft covered by the multiyear program under the terms of the proposed contract'' to head off a funding spike over the Future-Years Defense Program.

Second, the DOD–OIG and the National Defense University, NDU, concluded that the Air Force's commercial item procurement strategy ''prevented any visibility into Boeing's costs and required the Air Force to use a fixed-price type contract . . . The strategy also exempted [Boeing] from the requirement to submit cost or pricing data. The strategy places the Department at high risk for paying excessive prices and precludes good fiduciary responsibility for DOD funds.'' The NDU similarly concluded that ''[i]n a sole source, monopoly commercial environment, the government is not served well with limited price data'' and suggested that the Air Force neglected its fiduciary/stewardship responsibilities.

Third, the DOD–OIG and the NDU also concluded that the operational requirements document, ORD, for tankers was not tailored, as it should have been, to the requirements of the warfighter, but rather to closely correlate to the Boeing KC–767A. The DOD–OIG found that senior Air Force staff directed that the ORD closely correlate to the Boeing KC–767A that was being developed for a foreign government, in anticipation of the authorizing legislation. This is particularly troubling where, according to an internal Boeing document regarding the ORD, Boeing planned to ''[e]stablish clearly defined requirements in ORD for the USAF Tanker configuration that results in an affordable solution that meets the USAF mission needs and will prevent an AOA from being conducted.'' Under the current proposal, the first 100 tankers produced will not be capable of, among other things, interoperability with Navy, Marine, or coalition assets, or simultaneously refueling more than one receiver aircraft. Rear Adm. Mark P. Fitzgerald recently suggested that in theater, such a limitation restricts the Navy's long-range striking capability and fosters a needlessly risky aerial refueling environment.

Finally, documents suggest that the Air Force allowed Boeing to modify the requirements in the ORD while it was being developed. Documents also reflect that the Air Force induced the Joint Requirements Oversight Council, JROC, into approving and validating the corrupted ORD by falsely representing that it was not tailored to a specific aircraft. This is of continuing investigative interest to the Committee.

As I've described, the history of the Air Force's attempt to recapitalize its tanker fleet has been riddled with corporate scandal, public corruption and political controversy.

This amendment attempts to make sure that any effort by the Air Force to replace its fleet of tankers is done responsibly. The amendment achieves this by doing six things.

First, the amendment seeks to have the Secretary of Defense ensure that the Air Force Secretary not acquire any aerial refueling aircraft for the Air Force, by lease or contract, either with full or open competition, until at least 60 days after the Secretary of Defense has reviewed all documentation for the acquisition, including the completed AoA, the completed aerial refueling portion of the MCS, a new, validated capabilities document and the approval of a Defense Acquisition Board. And until the Secretary of Defense has submitted to the congressional defense committees a written determination that the acquisition is in compliance with all currently applicable laws and regulations.

Among the authorities with which the acquisition decision must comply is OMB Circular A–11, revised for 2003. In other words, without substantial private-party participation, any third-party financing arrangement, particularly those structured around a ''special purpose entity,'' will be deemed to be a transaction of the government. So, under OMB Circular A–11, the transaction must be reflected in the President's budget the year that obligations arising from it are incurred. The DOD–OIG, the Congressional Budget Office, the Congressional Research Service, and others have concluded that the proposed lease of tankers is a lease-purchase—for which renegotiation of the current contract or independent authorization may be required. Therefore, under OMB Circular A–11, budget authority would be needed for the entire obligation in the first year of the lease term.

Second, not less than 45 days after the Secretary of Defense submits this

determination, the Comptroller General and the DOD–OIG shall submit to the congressional defense committees a report on whether the acquisition complies with all currently applicable laws and regulations, as well as the requirements of the amendment itself, and is consistent with the AoA and the other documentation referred to in this amendment.

Third, the acquisition by lease or contract of any aerial refueling aircraft for the Air Force beyond low-rate initial production shall be subject to (and the Secretary of Defense will comply with) the requirements of sections 2366 and 2399 of title 10, United States Code.

Fourth, before selecting the provider of integrated support for the tanker fleet, the Secretary of Defense shall perform all analysis required by law of the costs and benefits of the alternative of using Federal Government personnel and contractor personnel to provide such support. The amendment also requires the Secretary to conduct all analysis required by law of the core logistics requirements, the use of performance-based logistics and the length of the contract period. The Secretary of Defense shall then select the provider on the basis of fair, full and open competition as defined by the Office of Federal Procurement Policy Act.

Fifth, before the Secretary of Defense commits to any acquisition of aerial refueling aircraft, the Secretary shall require the manufacturer to provide, with respect to commercial items covered by the lease or contract, information on the prices at which the same or similar items have been sold that is adequate for evaluating the reasonableness of the price for those, and other commercial, items.

Finally, the Secretary of the Air Force shall contact the DOD–OIG for the review and approval of any Air Force use of non-Federal audit services for any acquisition of aerial refueling aircraft.

A few notes about the amendment.

First, this amendment opens the process to oversight by getting the DOD–OIG, the DOD–Comptroller General, and the Defense Acquisition Board, DAB, actively involved in the process. Indeed, everyone who has independently looked into how the original proposal went through had major problems with the lack of transparency. For example, DAB was completely cut out of the process. As the NDU noted, if allowed to participate, the DAB would have exercised responsibility over the selection of a preferred system alternative, acceptance of the overall acquisition strategy, and compliance with applicable policies and statutes. This amendment deals the DAB back in the process to discharge its vital function in providing comprehensive senior management review.

As another example, under this amendment, the DOD–OIG will determine, among other things, whether the data provided by the aircraft and engine manufacturer is sufficient to determine the reasonableness of the price of those items. Coupled with the amendment's requirement that the DOD–OIG approve the Air Force's use of an outside auditor, the taxpayers' interests will be protected. Furthermore, I believe that the DOD–OIG's, the NDU's, and Institute for Defense Analyses' recommendations that the Air Force Secretary negotiate the price of the engines for the tankers with the engine manufacturers need to be implemented.

The bottom line here is this. The amendment does much to inject much needed sunlight in a program whose development has been largely insulated from public scrutiny. In so doing, the amendment allows us to discharge our oversight obligations the next time around on this multi-billion dollar procurement proposal, responsibly and effectively.

Second, the amendment gives the Secretary of Defense sufficient flexibility to pursue a lease only after, among other things, an AoA is completed. The Secretary has already committed to not going forward on replacing the current fleet until an AoA (and a MCS) are completed. While giving the Secretary appropriate flexibility, the amendment requires that the Air Force go through certain hoops to make sure that any acquisition of tankers in the future, is done the right way. These hoops were loosely drawn from the recommendations of the DOD–OIG, the DSB, and the NDU, whose input the Secretary specifically asked for. I will have printed a list of findings, conclusions, and recommendations by each at the end of this statement. They must all be fully considered before any decision to recapitalize the tanker fleet is made.

Third, it generally requires the DOD and the Air Force to do nothing more than comply with currently applicable statutes, regulations and OMB Circulars. Those who looked into the Air Force's conduct regarding the original proposal agreed that the Air Force did not comply extant statutory requirements. This amendment forces the Air Force to do that.

I ask unanimous consent that the list to which I referred be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF DEFENSE INSPECTOR GENERALS ACQUISITION OF THE BOEING KC–767A TANKER AIRCRAFT

RECOMMENDATIONS

Fully develop system engineering requirements to convert the commercial non-developmental aircraft into an integrated military configuration. Without fully developed system engineering requirements the Boeing KC–767A Tanker aircraft may not meet operational requirements for a 40-year service life as well as command, control, communications computers, and intelligence (C4I) support plan requirements, etc.

Tailor the first spiral or increment of the Operational Requirements Document (ORD) to warfighter requirements in the mission needs statement (MNS) for future aerial refueling aircraft not a specific aircraft. As a result, the first 100 KC–767A Tankers will not meet the operational requirement for interoperability and will not meet the mission capabilities in the Operational Requirements Document to conduct secondary missions, such as cargo/passenger, aeromedical evacuation mission, etc.

The Tanker Lease Program must comply with Sections 2366 and 2399 of title 10, United States Code for determining the operational effectiveness, suitability, and survivability of the Boeing 767A tanker aircraft before proceeding beyond low-rate initial production (LRIP). By not complying with the statutory provisions in Sections 2366 and 2399, the Boeing KC–767A tanker aircraft delivered to the warfighter may not be operationally effective, suitable, and survivable.

Discontinue the commercial item procurement strategy for the Boeing KC–767A Tanker Lease Program and replace fixed-price contracts for initial development, modification, and integrated fleet support with cost or fixed-price incentive type contracts that would require Boeing to provide cost or pricing data as appropriate.

Require that Boeing provide cost or pricing data for the Boeing 767–200ER aircraft, and require DOD to negotiate prices for aircraft engines directly with the engine manufacturers.

Require that the Air Force contact the Office of the Inspector General for the Department of Defense for review and approval of non-federal audit services in any lease or other contract.

Reduce the negotiated price calculated for integrated fleet support by $465 million for the misapplication of KC–10 support costs and ''performance aircraft availability.''

Perform statutory analyses of the costs and benefits of organic or contractor support, core logistics requirements, performance based logistics, and contract length before selecting a provider for integrated fleet support.

Not enter into the proposed lease for 20 Boeing KC–767A Tanker aircraft until after either obtaining new statutory authority to enter into a lease-purchase contract or renegotiating lease terms to meet Office of Management and Budget Circulars No. A–11 and A–94 requirements for an operating lease.

Determine whether leasing rather than purchasing 20 Boeing KC–767A Tanker aircraft represents the best value to the government.

Ensure the General Counsel of the Department of Defense review the limitation of earning clause and determine whether it creates a prohibited cost-plus-a-percentage-of-cost system of contracting and review clauses C–016 ''Aircraft Quantity,'' C–024 ''Anti-Deficiency Act,'' and C–103 ''Termination for Convenience—Pre-Construction Aircraft'' in the proposed contract to determine whether the contract clauses and audit rights provide sufficient controls to adequately define the extent of the Government's termination liability and to prevent a possible Anti-Deficiency Act violation if less than the full quantity of aircraft and fleet support years are leased and purchased.

Ensure that the Program Director, KC–767A System Program Office:

Establishes a process to develop a performance metric for verifying that the tanker aircraft will meet the 40-year service life requirement.

Revises the system specification for the proposed tanker aircraft to include a requirement for protective measures to control corrosion and to include requirements in the Operational Requirements Document (ORD)

for interoperability with other systems, integration of secure communications, and combat identification.

Completes the command, control, communications, computers, and intelligence support plan for the tanker aircraft; include it in the statement of work before award of the contracts and resolve issues identified before the system acceptance testing.

Ensure that the system specifications developed for the first spiral of the air refueling aircraft include at least all key performance parameters (KPPs) and that spiral two and three requirements are subsequently included in the first 100 and future aerial refueling aircraft.

Comply with the statutory provisions by conducting operational and survivability testing on production representative aircraft before committing to the production of all 100 Boeing KC–767A tanker aircraft.

DEFENSE SCIENCE BOARD TASK FORCE FINDINGS AND RECOMMENDATIONS ON AERIAL REFUELING

FINDINGS

Corrosion can be controlled.

KC–135 tanker Operation and Support (O&S) cost growth is not as large as was once projected. The Air Force overstated the case for an increase in these costs for KC–135 tankers.

The total requirement for tankers is uncertain; the Mobility Capabilities Study (MCS) needs to resolve this issue.

There is a need to embark on a tanker recapitalization program upon the completion of the Analysis of Alternatives (AOA) and the Mobility Capabilities Study (MCS); which doesn't necessarily mean acquiring new aircraft.

RECOMMENDATIONS

Do not use corrosion as a justification for tanker recapitalization.

Air Force has a robust corrosion control program.

Depot Major Structural Repairs (MSRs) appear to be decreasing.

Consensus view on corrosion is that it is manageable—DSB structural experts, commercial entities (i.e., FEDEX), other government entities (Department of the Navy (DON), U.S. Air Force 2001 Extended Service Life Study (ESLS), Congressional Research Service (CRS), General Accounting Office (GAO)).

Corrosion can be controlled with proper maintenance procedures to help reduce the cost of replacement.

Basic field level maintenance and inspection;

60-month (or shorter) cycle for depot maintenance;

Innovative procedures have reduced time in maintenance; and

Further improvements possible (i.e., sheltering, basing rotation, etc.).

It is acceptable to tolerate manageable growth in KC–135 Operation & Support (O&S) costs and defer major near-term recapitalization investments.

2001 USAF ESLS estimated—0.9% increase in O&S cost per year.

Corrosion is manageable.

Very recent USAF projection shows O&S peaked in FY04 and may turn down.

Update Tanker Requirements Study 05 (TRS05) to accommodate new tanker CONOPS.

Tanker Requirements Study 05 (TRS05) completed in FY01 was never promulgated.

TRS 05 concluded 500–600 tankers are adequate for current contingencies.

TRS 05 needs to be updated for changing tanker CONOPS.

Potential increases in requirements—''Efficiency tanking'' for loitering aircraft in kill boxes;

New planning scenarios;

Homeland defense needs—could this requirement be contracted out (i.e., Omega Air, etc.); and

Potential decreases in requirements (i.e., re-engining of B–52's, F–22/JSF CONOPS, etc.).

Consider 2001 Defense Science Board Task Force recommendation to re- engine KC–135Es and February 2004 Defense Science Board Task Force recommendation which reconfirmed value of B–52 re-engining: 10,000 mile mission (US to Afghanistan and return) would only require one refueling versus two; Fuel offload demand declines from 276K pounds to 118K pounds; and F–22/JSF capabilities may allow refueling on mission egress only.

No compelling material or financial reason to initiate a replacement program prior to the completion of the Analysis of Alternatives (AoA) and the Mobility Capabilities Study (MCS).

Resolve long-term requirements through a thorough Mobility Capabilities Study (MCS).

Consider the following near-term options: lease/buy a new tanker aircraft, re-engine the KC–135Es, convert retired commercial aircraft, encourage commercial sources for CONUS tanking.

Consider refurbishing KC–10's in the near-term:

FEDEX has converted retired DC–10s for use as cargo carriers with 20-year life for $25–$30 million per aircraft. Northwest Airlines is flying 22 DC–10s with average cycles less than 20,000.

The design service goal for DC–10s is 42,000 cycles. There are 37 large DC–10s currently in the desert with average cycles of only 18,500 cycles. Cost to refurbish KC–10s in the desert is $1–$7 million.

Aerial refueling capability installation costs based on the Institute for Defense Analyses (IDA) estimate is $20M per airframe.

We should replace the 63 remaining KC–135Es with 25 refurbished KC–10s. Dutch KDC–10 tanker conversion total cost approximately $30–$45M each. One KC–10 is the equivalent of 2.4 KC–135Es equivalents.

Consider a potential hybrid recapitalization tanker program:

Consider retiring 61 KC–135Es in the near-term, under the USAF plan and make the KC–135E tanker aircraft available to commercial entities for use as commercial tankers for CONUS missions such as training and homeland defense operations.

Phase out the remaining 63 KC–135E tankers by FY 2011 and replace them with converted KC–10s by leveraging the mothballed DC–10s in the desert and the Northwest Airlines fleet.

Work with major airframe manufacturers to develop new tanker options with more modern airframes versus the more than 20-year old Boeing 767 design.

INDUSTRIAL COLLEGE OF THE ARMED FORCES, NATIONAL DEFENSE UNIVERSITY TANKER LEASE PROGRAM ACQUISITION ''LESSONS LEARNED'' OR ''THE INNOVATOR'S DILEMMA''

FINDINGS

The enactment of Section 8159 of the FY 2002 Appropriations Act authorized a previously unarticulated requirement and specified the use of an operating lease, when it should not have done so.

The DOD budget process was by-passed with considerable risk, especially with the lost opportunity of vetting legitimate competing needs and beginning to identify total tanker program costs.

Leases, by their very nature, cost more than purchases.

The Operational Requirements Document (ORD) was not capabilities-based, as it should have been. Contractor selection was a foregone conclusion and was tailored to the Boeing 767 in the Joint Requirements Oversight Council (JROC) based on perceived guidance in the FY 2002 Appropriations Act, Section 8159.

There is a need to establish a definitive, consistent early requirements statement addressing warfighter needs founded on substantive analysis—this was not done in the Tanker Lease Program.

A program that operates in a sole source, commercial environment is especially hard pressed to carry out its charge of ensuring the government receives a fair price.

Defense program personnel do have adequate tools or training to obtain the fullest understanding of relevant commercial buying practices in acquisition of military items.

Innovation requires top-level management's constant involvement including direction, consultation and responsibility plus timely and frequent meetings of the empowered and the informed.

It should be clear that certain regulatory/statutory requirements were waived in the Tanker Lease Program: testing, independent cost estimates, Analysis of Alternatives, DAB approval, etc.

The Leasing Review Panel (LRP) was not a substitute for the Defense Acquisition Board (DAB).

RECOMMENDATIONS

Although leasing is not a preferred strategy, if DOD would pursue a lease, it needs to publish more explicit guidance on leasing in acquisition policy directives and the FAR/DFAR, at a minimum, to include the requirement to:

Formulate an early, transparent, comprehensive acquisition processes to be utilized and those to be bypassed with an assessment of associated internal and external risks.

Develop an early definitive, consistent requirements statement founded on substantive analysis and supported by a subsequent Analysis of Alternatives (AOA).

Establish an acceptable lease financing plan supported by an independent cost estimate (i.e., DOD IG, Comptroller General, etc.)

Develop a plan to maximize competition.

In all cases, convene a Defense Acquisition Board to provide for comprehensive senior management review.

DOD needs to understand when and how commercial buying practices are appropriate to satisfy military needs, if ever.

There is a need to establish procedures or authority to require both cost and pricing data for significant sole source, commercial leases or where supplier monopoly power is present. The government is not well served with only price data, particularly in a monopoly-monopsony relationship. Absent real competitive market forces, one cannot rely on pricing data to determine the appropriateness of a transaction. Legitimate monopolies are regulated by detailed cost data and prices are set on that basis. To do otherwise is to place too great a reliance for fair dealing on profit maximizing firms and to ignore the reality that firms appropriately act in their best interest.

Regardless of the foregoing, due diligence and fiduciary/stewardship responsibilities cannot be waived.

Ensure that an Analysis of Alternatives (AOA) is completed: A less than rigorous exploration/evaluation of alternative solutions than a formal Analysis of Alternatives (AOA) is unsatisfactory. There is no such thing as an ''informal'' AOA.

Authors of innovation need to develop action plans to ''accommodate'' those internal

and external stakeholders who have a legitimate interest or say in the program. Ignoring such stakeholders, even if allowed by an appropriations act or management direction, is done with some peril and consequence as the stakeholders' unanswered or discounted objections may be encountered later as the program progresses.

There is no one, uniform commercial market. Each market has unique features that must be understood in order to obtain the best contract conditions, tailored to each buyer's needs.

Ensure the Leasing Panel focuses on ways and means of leasing.

The Tanker Lease Program should be approved by a Defense Acquisition Board (DAB) in accordance with DOD regulations.

A Defense Acquisition Board (DAB) would have exercised responsibility over the substantive acquisition review issues such as: The selection of the preferred system alternative; acceptance of the overall acquisition strategy; compliance with policy and statute; and would have required a substantial review and documentation to support analyses.

Relying on Section 8159 of the FY 2002 Defense Appropriations Act, the USAF/DoD bypassed many elements of the ''normal'' acquisition system. The Tanker Lease Program system solution and the acquisition strategy (i.e., Boeing 767 & operating lease scenario) were foregone conclusions based on Section 8159 of the FY 2002 Appropriations Act. The Leasing Review Panel was not an adequate substitute for the Defense Acquisition Board (DAB), which was never convened. Furthermore, the Leasing Review Panel (LRP) never recommended the lease of 100 Boeing 767 tankers.

DOD needs to follow cost and pricing guidelines.

There should be discussion and debate, within DOD, whether a realistic price was arrived at.

The government should not have very limited cost and pricing data.

The government should expend considerable time and resources to acquire commercial pricing analysis skills.

The Tanker Lease Program approved by DOD made only limited use of considerable government buying power and leverage to obtain maximum discounts.

DOD needs to utilize competitive processes, including negotiating directly with the engine manufacturer for engines, the contractor logistics support (CLS) function and the tanker modification. The USAF appeared to rely on Section 8159 of the FY 2002 Appropriations Act for commercial sole source authority. Competitive processes were not used in the February 2002 RFI to Boeing and EADS (also a finding of the DOD IG), because there was informal information gathering, and little expectation that Congress would allow leasing of Airbus aircraft. Competitive processes were not used June 2002 for the JROC briefing and the Operational Requirements Document (ORD) was written for a specific aircraft. (i.e., Boeing KC–767) and not based on the best capabilities for the warfighter.

Publish explicit DOD guidance on leasing to include policy directives and the FAR/DFAR.

Innovation requires more, not less up-front planning (e.g., development of an acquisition strategy establishing work-arounds for processes, requirements and stakeholders that are planned to be by-passed.)

Establish procedures to require both cost and pricing data on sole source or monopoly, commercial leases.

Big ticket acquisitions is a public process, despite the level of innovation, managers must always exercise good stewardship and fiduciary responsibility—this was not the case in the Tanker Lease Program.

It is prudent, at a minimum, to develop a full operational testing plan, to perform a much more substantive analysis of alternatives, and to do an independent cost estimate based on cost, not price.

Mr. LEAHY. Mr. President, I rise today to speak about a very simple amendment that everyone should support. This amendment requires the Inspector General of the Department of Defense, DOD–IG, in consultation with the Inspectors General of the State Department and the CIA, to conduct a comprehensive investigation into the programs and activities of the Iraqi National Congress, INC.

Over the last 10 years, we have seen funds from the United States Government spent in highly questionable, if not fraudulent, ways including money spent on oil paintings and health club memberships. But this is only the tip of the iceberg. A number of serious questions remain unanswered. Here are a couple of examples:

First, the INC spent millions in setting up offices around the world, including London, Prague, Damascus, and Tehran. The State Department's internal documents indicate that they really had no idea of what was happening in some of these offices—especially Tehran. In light of the recent press reports about INC intelligence sharing with Iran, I think the DOD–IG should take a look at this issue and see what was happening in the Tehran office. We need to get to the bottom of this.

Second, the INC spent millions to set up radio and television broadcasting inside Iraq. The radio program seemed redundant as the U.S. Government was, at the time, funding Radio Free Iraq. A New York Times article questioned the effectiveness of the TV broadcasting program. Kurdish officials indicated that, despite repeated attempts, they could never pick up the INC's TV broadcast inside Iraq. This, again, raises questions about how this money was being spent. The IG should examine this issue. We need to get to the bottom of this.

Third, the INC's Information Collection Program—funded initially by the State Department and later by the Defense Department—continues to be a source of controversy and mystery. I have a memo written by the INC to Appropriations Committee staff, detailing the INC's Information Collection Program. In this memo, the INC claims to have written numerous reports to senior administration officials, who are listed in this memo, on topics including WMD proliferation. The administration disputes this claim. Again, we need to get to the bottom of this.

I could go on and on. However, in the interest of time, I will simply say that there are many serious unanswered questions about the INC's activities. What was the INC doing with U.S. taxpayer dollars? What was going on in the Tehran office? Did the Information Collection Program contribute to intelligence failures in Iraq? Were the broadcasting programs at all effective in gathering support for U.S. efforts in Iraq?

To be sure, there have been a few investigations into INC. However, these have been incomplete offering only a glimpse of what occurred. A few years ago, the State Department Inspector General issued two reports the INC. But these reports only covered $4.3 million and examined only the Washington and London offices. The State Department IG informed my office yesterday that these are the only two audits they conducted and have no plans to conduct future audits on this issue.

A GAO report, published earlier this year, summarized the different grant agreements that the State Department entered into with the INC, but this report did not attempt to answer the myriad questions that remain about the INC.

Another GAO report is underway, but this looks only at the narrow question of whether the INC violated U.S. laws concerning the use of taxpayer funds to pay for publicity or propaganda.

Finally, according to press reports, the Intelligence Committee is looking into a few issues related to the INC. My amendment is consistent with these investigations. The DOD–IG does not have to re-invent the wheel. It can build off this existing body of work to answer questions that will remain long after these investigations have been completed.

My amendment is about transparency. My amendment is about accountability. My amendment is about getting to the bottom of one of the most mismanaged programs in recent history. Most importantly, my amendment is about learning from our mistakes so we do not repeat them in the past. I urge my colleagues to support my amendment.

AMENDMENT NO. 3399, AS MODIFIED

Mr. FEINGOLD. Mr. President, I thank the chairman and the ranking member of the Armed Services Committee for working with me to accept this amendment, which represents a first step toward enhancing and strengthening transition services that are provided to our military personnel. I also thank my cosponsor, the Senator from Maine, Ms. SNOWE, for her contributions to this amendment.

As we debate the Department of Defense authorization bill today, thousands of our brave men and women in uniform are in harm's way in Iraq, Afghanistan, and elsewhere around the globe. These men and women serve with distinction and honor, and we owe them our heartfelt gratitude.

We also owe them our best effort to ensure that they receive the benefits to which their service in our Armed Forces has entitled them. I have heard time and again from military personnel and veterans who are frustrated with the system by which they apply for benefits or appeal claims for benefits. I have long been concerned that

tens of thousands of our veterans are unaware of Federal health care and other benefits for which they may be eligible, and I have undertaken numerous legislative and oversight efforts to ensure that the Department of Veterans Affairs makes outreach to our veterans and their families a priority.

While we should do more to support our veterans, we must also ensure that the men and women who are currently serving in our Armed Forces receive adequate pay and benefits, as well as services that help them to make the transition from active duty to civilian life. I am concerned that we are not doing enough to support our men and women in uniform as they prepare to retire or otherwise separate from the service or, in the case of members of our National Guard and Reserve, to demobilize from Active Duty assignments and return to their civilian lives while staying in the military or preparing to separate from the military. We must ensure that their service and sacrifice, which is much lauded during times of conflict, is not forgotten once the battles have ended and our troops have come home.

For those reasons, last month, I introduced the Veterans Enhanced Transition Services Act, VETS Act, which would improve transition services for our military personnel. My legislation would help to ensure that all military personnel receive the same services by making a number of improvements to the existing Transition Assistance Program/Disabled Transition Assistance Program, TAP/DTAP, and to the Benefits Delivery at Discharge program, by improving the process by which military personnel who are being demobilized or discharged receive medical examinations and mental health assessments, and by ensuring that military and veterans service organizations and State departments of veterans affairs are able to play an active role in assisting military personnel with the difficult decisions that are often involved in the process of discharging or demobilizing.

I am pleased that my original legislation is supported by a wide range of groups that are dedicated to serving our men and women in uniform and veterans and their families. These groups include: the American Legion; the Enlisted Association of the National Guard of the United States; the Paralyzed Veterans of America; the Reserve Officers Association; the Veterans of Foreign Wars; the Wisconsin Department of Veterans Affairs; the Wisconsin National Guard; the American Legion, Department of Wisconsin; Disabled American Veterans, Department of Wisconsin; the Wisconsin Paralyzed Veterans of America; the Veterans of Foreign Wars, Department of Wisconsin; and the Wisconsin State Council, Vietnam Veterans of America. I will continue to work with these and other veterans and military organizations on these important issues.

The amendment that I am offering today on behalf of myself and Senator SNOWE is based on that legislation. This amendment will require the General Accounting Office, GAO, to undertake a comprehensive analysis of existing transition services for our military personnel that are administered by the Departments of Defense, Veterans Affairs, and Labor and to make recommendations to Congress on how these programs can be improved.

This study will focus on two issues: how to achieve the uniform provision of appropriate transition services to all military personnel, and the role of postdeployment and predischarge health assessments as part of the larger transition program.

I have heard from a number of Wisconsinites and members of military and veterans service organizations that our men and women in uniform do not all have access to the same transition counseling and medical services as they are demobilizing from service in Iraq, Afghanistan, and elsewhere. I have long been concerned about reports of uneven provision of services from base to base and from service to service. All of our men and women in uniform have pledged to serve our country, and all of them, at the very least, deserve to have access to the same services in return.

This amendment will require GAO to conduct an analysis of transition programs, including a history of how the programs were intended to be used when they were created and how they are being used now; whether the programs adequately address the specific needs of military personnel, including members of the National Guard and Reserve; and how transition programs differ among the services and across military installations. The GAO will also be required to make recommendations on how these programs can be improved, including an analysis of additional information that would be beneficial to members participating in transition briefings.

Under current law, the Department of Defense, together with the Departments of Veterans Affairs—VA—and Labor, provide preseparation counseling for military personnel who are preparing to leave the service. This counseling provides service members with valuable information about benefits that they have earned through their service to our country such as education benefits through the GI Bill and health care and other benefits through the VA. Personnel also learn about programs such as Troops to Teachers and have access to employment assistance for themselves and, where appropriate, their spouses.

Currently, participation in this program is encouraged, but not mandatory. Thus, most of the responsibility for getting information about benefits and programs falls on the military personnel themselves. Participation in preseparation counseling through a TAP/DTAP program is a valuable tool for personnel as they transition back to civilian life. The Department of Defense should make every effort to ensure that all members participate in this important program, and my amendment would require the GAO to analyze participation rates and make recommendations on how the Department of Defense could better encourage participation, and whether participation in a transition program should be mandatory.

In addition, GAO would be required to make recommendations on any information that should be added to the transition briefings, such as information on procurement opportunities for veterans with service-connected disabilities and for other veterans. I thank the Senator from Maine, Ms. SNOWE, the chairman of the Small Business Committee, for making the important point that Federal law requires that a certain percentage of contracts be awarded to firms owned by veterans with service-connected disabilities. Additionally, the Small Business Administration and other agencies administer programs to make all veterans aware of procurement opportunities. I agree with her that the transition process is a commonsense place to make these personnel aware of these opportunities. For that reason, our amendment also requires that the Department of Defense include information about these contracting opportunities in its transition program.

The amendment would also require the GAO to study how the transition programs administered by the VA and by the Department of Labor fit into this transition effort. This analysis would include a discussion of the joint DOD–VA Benefits Delivery at Discharge program, which assists personnel in applying for VA disability benefits before they are discharged from the military. This very successful program has helped to cut the redtape and to speed the processing time for many veterans who are entitled to VA disability benefits.

In addition, under current law, the Secretary of Defense may make use of the services provided by military and veterans service organizations as part of the transition process. But these groups tell me that they are not always allowed access to transition briefings that are conducted for our personnel. For that reason, this amendment would require GAO to include an analysis of the participation of military and veterans service organizations in preseparation briefings, including recommendations on how the Department of Defense could make better use of representatives of veterans service organizations who are recognized by the Secretary of Veterans Affairs for the representation of military personnel in VA proceedings.

The demobilization and discharge process presents our service members with a sometimes confusing and often overwhelming amount of information and paperwork that must be digested and sometimes signed in a very short period of time. The opportunity to

speak with fellow veterans who have been through this process and who have been accredited to represent veterans in VA proceedings by the VA can be invaluable to military personnel as they seek to wade through this maze of paperwork. These veterans can offer important advice about benefits and other choices that military personnel have to make as they are being discharged or demobilized. I commend the Senator from Louisiana, Ms. LANDRIEU, for offering an amendment which has already been accepted to this bill that reaffirms the importance of allowing veterans service organizations to participate in transition briefings and that also encourages their involvement in counseling members of the National Guard and Reserve who have been demobilized. The Landrieu amendment is consistent with provisions in my legislation, the VETS Act, and I am pleased that the Senate has gone on record in support of allowing these dedicated members of our veterans service organizations, who have taken the time to get accredited by the Secretary of Veterans Affairs in order to counsel and represent their fellow veterans, to participate in transition briefings.

In addition to the uneven provision of transition services, I have long been concerned about the immediate and long-term health effects that military deployments have on our men and women in uniform. I regret that, too often, the burden of responsibility for proving that a condition is related to military service falls on the personnel themselves. Our men and women in uniform deserve the benefit of the doubt, and should not have to fight the Department of Defense or the VA for benefits that they have earned through their service to our Nation.

Part of the process of protecting the health of our men and women in uniform is to ensure that the Department of Defense carries out its responsibility to provide postdeployment physicals for military personnel. I am deeply concerned about stories of personnel who are experiencing long delays as they wait for their postdeployment physicals and who end up choosing not to have these important physicals in order to get home to their families that much sooner. I am equally concerned about reports that some personnel who did not receive such a physical—either by their own choice or because such a physical was not available—are now having trouble as they apply for benefits for a service-connected condition.

I am pleased that the underlying bill contains a provision that would require postdeployment physicals for military personnel who are separating from Active-Duty service. I firmly believe, as do the military and veterans groups that support my VETS Act legislation, that our men and women in uniform are entitled to a prompt, high quality physical examination as part of the demobilization process. These individuals have voluntarily put themselves in harm's way for our benefit. We should ensure that the Department of Defense makes every effort to determine whether they have experienced—or could experience—any health effects as a result of their service.

I am also pleased that the Senate has already adopted an amendment offered by the Senator from New York, Mrs. CLINTON, and the Senator from Missouri, Mr. TALENT, that will help to improve the medical readiness of our men and women in uniform and to ensure their health is monitored before, during, and after deployments so that there is a record of any service-connected conditions or exposures.

Building on this effort, my amendment would require the GAO to include in its study of transition services an analysis of the use of postdeployment and predischarge health screenings and whether and how these screenings and the transition program could be integrated into a single, coordinated preseparation program for military personnel who are being discharged or released from active duty. The analysis would also include information on how postdeployment questionnaires are used, the extent to which military personnel waive physical exams, and how and the extent to which personnel are referred for followup health care.

I am also concerned about the implementation of current law with respect to the current requirement that postdeployment medical examinations include a mental health assessment. Our men and women in uniform serve in difficult circumstances far from home, and too many of them witness or experience violence and horrific situations that most of us cannot even begin to imagine. These men and women, many of whom are just out of high school or college when they sign up, may suffer long-term physical and mental fallout from their experiences and may feel reluctant to seek counseling or other assistance to deal with their experiences.

We can and should do more to ensure that the mental health of our men and women in uniform is a top priority, and that the stigma that is too often attached to seeking assistance is ended. To that end, this amendment requires that GAO include in its analysis a discussion of the current process by which mental health screenings are conducted, followup mental health care is provided for, and services are provided in cases of posttraumatic stress disorder and related conditions in connection with discharge and release from active duty. This will include an analysis of the number of persons treated, the types of interventions, and the programs that are in place for each branch of the Armed Forces to identify and treat cases of PTSD and related conditions.

As part of its study on these important issues, GAO is directed to obtain views from the Secretary of Defense and the Secretaries of the military departments; the Secretaries of Veterans Affairs and Labor; military personnel who have received the transition assistance programs covered by this study and personnel who have declined to participate in these transition programs; representatives of military and veterans service organizations; and persons with expertise in health care, including mental health care, provided under the Defense Health Program, including personnel from the Departments of Defense and Veterans Affairs and persons in the private sector.

Finally, in response to concerns I have heard from a number of my constituents, this amendment also directs the Secretaries of Defense and Labor to jointly report to Congress on ways in which DOD training and certification standards could be coordinated with Government and private-sector training and certification standards for corresponding civilian occupations.

Again, I thank the chairman and the ranking member of the committee for working with me to include these provisions in the bill. I will continue to work to ensure that we provide those serving in our Armed Forces with the help they need and deserve in making the often-difficult transition back to civilian life.

MILITARY HOUSING PRIVATIZATION

Mr. CHAMBLISS. Mr. President, I rise today to discuss a very important matter to me, to my home State of Georgia and to our Nation's military. A few years ago this Congress authorized the military housing privatization initiative. This program, which brings to bear private sector experience and financial strength to improve the quality of life for our soldiers, sailors, airmen, Marines and their families, has been a resounding success. To date, the U.S. Armed Forces have privatized over 60,000 housing units, leveraging more than $10 for every Government dollar invested. Out-dated, and World War II era, housing is being replaced with modern homes and amenities that our servicemen and women so richly deserve. This process is taking place across the country, from Camp Pendleton Marine Corps Base in California to Fort Bragg in North Carolina to Fort Benning, GA.

However, there is an issue which threatens the livelihood and progress of this program and which the Congress must act now to address. The way the Congressional Budget Office is scoring expenditures for this program causes the program to exceed the authorized spending cap. The CBO scoring assumes that the Government guarantees and the management of the housing projects in question have direct budget implications. However, military families sign leases and rent the units and private companies assume the investment risk, so the CBO scoring, incorrectly in my opinion, treats these costs as an obligation on behalf of the Government. I believe we need to either significantly raise the current cost cap for the program or eliminate it entirely in order to make available an

adequate funding stream to see this important project through to completion.

The Department of Defense has established a master plan which will privatize approximately 160,000–170,000, or over 70 percent, of existing family housing units. Currently, DoD is about half way towards completing that goal. We should allow this well-functioning program to continue for the benefit of our men and women in uniform, and we should follow the traditional scoring guidelines which we have used for the past 5 years in order to accurately determine the actual costs.

I thank the Chair for the opportunity to discuss this very important issue, and I look forward to working with my colleagues in the relevant committees to resolve this situation in a positive manner.

Mr. FEINGOLD. Mr. President, I support passage of this year's Defense authorization bill because it contains many provisions that our brave men and women in uniform need and deserve. But before I go into the details of why I am supporting this legislation, I must first thank the members of the United States Armed Forces for their service to our country. They are performing admirably under difficult circumstances all over the world. Our soldiers, sailors, airmen, and Marines, along with their families, are making great sacrifices in service to our country. I am voting for this legislation to support these people who are serving the country with such courage.

I strongly support the 3.5 percent across-the-board pay raise for military personnel that this bill provides. We must make sure that our professional military is paid a fair wage. This bill also makes permanent the increase in family separation allowance and imminent danger pay, another important policy for our men and women in uniform. Once again, I was proud to support the expansion of full-time TRICARE health insurance for our National Guard and Reserve. The reserve component is being used more than at any other time since World War II. Forty percent of our troops in Iraq are reserve component troops. These citizen soldiers face additional burdens when they transition in and out of their civilian life and providing them and their families with TRICARE is one way we can ease those burdens.

Another aspect of this bill that I strongly support is the increased funding for force protection equipment. Last year, concerned Wisconsinites contacted my office telling me that they or their deployed loved ones were fighting for their country in Iraq without the equipment they needed. This situation is unconscionable. I have repeatedly pressed the Pentagon to fix this situation and I and my colleagues went a long way in addressing these shortages in the supplemental spending bill for Iraq and Afghanistan. The $925 million for additional up-armored HUMVEES and other ballistic protection as well as the $600 million in force protection gear and combat clothing in this bill above what was in the President's proposed budget further ensures that our troops have the equipment they need to perform their duties on the ground.

I am pleased that the Senate approved my amendment to ensure that the Inspector General for the Coalition Provisional Authority will continue to oversee U.S. reconstruction efforts in Iraq after June 30 of this year as the Special Inspector General for Iraq reconstruction. The American taxpayers have been asked to shoulder a tremendous burden in Iraq, and we must ensure that their dollars are spent wisely and efficiently. Today, the CPA is phasing out, but the reconstruction effort has only just begun. As of mid-May, only $4.2 billion of the $18.4 billion that Congress appropriated for reconstruction in November had even been obligated. With multiple agencies involved and a budget that exceeds the entire foreign operations appropriation for this fiscal year, U.S. taxpayer-funded reconstruction efforts should have a focused oversight effort. My amendment will ensure that the Inspector General's office can continue its important work even after June 30, rather than being compelled to start wrapping up and shutting down while so much remains to be done. This is good news for the reconstruction effort, and good news for American taxpayers.

I also want to thank the chairman and the ranking member of the Armed Services Committee for working with me to accept the amendment that I offered with the Senator from Maine, Ms. SNOWE, which represents a first step toward enhancing and strengthening transition services that are provided to our military personnel. This amendment will require the General Accounting Office to undertake a comprehensive analysis of existing transition services for our military personnel that are administered by the Department of Defense, Veterans Affairs, and Labor and to make recommendations to Congress on how these programs can be improved. This study will focus on two issues: how to achieve the uniform provision of appropriate transition services to all military personnel, and the role of post-deployment and pre-discharge health assessments as part of the large transition program. I very much look forward to reviewing the results of this study.

The Senate version of the Defense authorization bill also includes a provision finally fulfilling a goal for which I have been fighting for years—making sure that every State and territory has at least one Weapons of mass Destruction Civil Support Team, WMD–CST. I was delighted earlier this year when Wisconsin was chosen as one of 12 States to receive a WMD–CST authorized and appropriated for in FY2004, but I was also disappointed that the President's proposed budget for FY2005 included funding for only 4 of the 11 outstanding teams. I, along with 28 of my colleagues, wrote the Senate Armed Services Committee chairman and ranking member asking them to fully fund all 11 remaining teams. The chairman and ranking member have been very supportive of my efforts in this area over the years, and I thank them again this year for funding all 11 remaining WMD–CSTs.

This authorization bill addresses the grave threat our Nation faces from unsecured nuclear materials. It includes $409 million for the Cooperative Threat Reduction program and $1.3 billion for the Department of Energy nonproliferation programs. I was also proud to cosponsor the amendment offered by Senator DOMENICI and Senator FEINSTEIN that authorizes the Department of Energy to secure the tons of fissile material scattered around the world. This bipartisan initiative aims to dramatically accelerate current efforts to the world. This bipartisan initiative aims to dramatically accelerate current efforts to secure this dangerous material so that it cannot fall into the hands of those who aim to harm us. Time is of essence, and I was pleased to hear that the administration is fully supportive of this efforts through the Global Threat Reduction Initiative.

I also voted for an amendment offered by Senator REED that boosts the Army's end strength by 20,000. I did so because it has become clear that the Army is currently overstretched, and I believe that we need to ensure readiness to handle threats in the future. A recent Brookings Institution report says that the military is being stretched so thin that if we don't expand its size, it could break the back of our all-volunteer Army. One does not have to support all of the deployment decisions that brought us to this point today to see that we need to have the capacity to handle multiple crises with sufficient manpower and strength. I do not take lightly the decision to lock in a significant increase in spending. The need is great, however, and the deliberative defense authorization process, not the emergency supplemental process, is the place to do it.

I must note that, unfortunately, this bill has many of the same problems that I've been fighting to fix for years. Once again, we are spending billions upon billions of dollars for weapons systems more suited for the Cold War than the fight against terrorism. I was very disappointed that the Senate did not agree to Senator LEVIN's amendment that would have used a small percentage of the over $10 billion authorized for missile defense for critical unfunded homeland defense needs. This amendment, which I cosponsored, would have used $515.5 million now slated for additional untested interceptors and spent it instead on the top unfunded Department of Defense homeland defense priorities, research and development programs, radiation detection equipment at seaports, and

other important defenses against terrorism. Budgeting is about setting priorities and I am sad to say that when the Senate failed to adopt Senator LEVIN's amendment, it missed a golden opportunity to adjust its priorities in order to face our country's most pressing threat—the threat of terrorism.

I was disappointed that the Senate failed to reduce the retirement age for those in the National Guard and Reserve from 60 to 55. Our country has placed unprecedented demands upon the Guard and Reserve since September 11, 2001, and will continue to do so for the foreseeable future. Considering the demands we are placing on them, it is time that we lower the Guard and Reserve's retirement age to the same level as civilian Federal employees.

Although my support for reducing the reserve component retirement age has been unwavering, because of the significant budgetary impact of this measure I had hoped that Congress would first receive reviews of reserve compensation providing all of the information that we need to address this issue responsibly. I patiently waited for several studies on this issue, including by the Defense Department, but when the studies came out they called for further study. This matter cannot continue to languish unaddressed indefinitely. As retired U.S. Air Force Colonel Steve Strobridge, government relations director for the Military Officers Association of America, MOAA, put it, ''It is time to fish or cut bait.'' I agree with MOAA's analysis that, ''Further delay on this important practical and emotional issue poses significant risks to long-term (Guard and Reserve) retention'' and I was proud to vote for the amendment offered by the Senator from New Jersey, Mr. CORZINE.

I also believe that the Senate missed an opportunity to provide a small but needed measure of relief to military families when it failed to adopt my Military Family Leave Act amendment. This amendment would have allowed a spouse, child, or parent who already qualifies for Family and Medical Leave Act, FMLA benefits—unpaid leave—to use those existing benefits for issues directly arising from the deployment of a family member. The Senate adopted a similar amendment by unanimous consent when I offered it to the Iraq supplemental spending bill. This amendment has the support of the Military Officers Association of America, the Enlisted Association of the National Guard of the United States, the Reserve Officers Association, the National Guard Association of the United States, the National Military Family Association, and the National Partnership for Women and Families.

I regret that a harmful second degree amendment was offered to my amendment and that I was not given the opportunity to have a straight up or down vote. Rather than taking up the Senate's time in a protracted debate about the second degree amendment, I withdrew my amendment so that this important Defense authorization bill could move forward. However, the need addressed by my amendment remains, and I will continue to fight to bring some relief to military families that sacrifice so much for all of us.

I want to bring attention to another element of the Defense Authorization bill that raises concerns for me. The Defense Authorization bill includes language that raises troop caps in Colombia from 400 to 800 military personnel and from 400 civilian contractors to 600. I am disappointed that Senator BYRD's amendment was not approved by the Senate, which would have limited the increases in these caps to the levels established by the bill. Most importantly, I worry about placing more Americans in harm's way in Colombia. Further deployments bring greater risks to an already overstretched military. We do not want to risk being drawn further into Colombia's civil war—certainly not without a thorough debate that the American people can follow. In addition, many of my constituents and I remain concerned that by raising these caps, the U.S. devotes greater resources to the military side of the equation in Colombia without balancing our approach through greater support for democratic institutions, increasing economic development, and supporting human rights.

There are other provisions in this bill with which I disagree, and the Senate rejected a number of amendments that would have made this bill better. However, on balance this legislation contains many good provisions for our men and women in uniform and their families and that is why I will vote for it.

Mr. MCCAIN. Mr. President, I strongly support the passage of S. 2400, the National Defense Authorization Act for Fiscal Year 2005. This legislation funds $422.2 billion for defense programs, which is a 3.4 percent increase or $20.9 billion above the amount approved by Congress last year. I commend the bill managers, Senators WARNER and LEVIN, for their leadership both in the Committee and on the floor these past weeks. This is a very important bill, and I am pleased we are about to proceed to final passage.

Yesterday, I had a lengthy statement on the Boeing 767 Tanker Lease Program so I will not take up more of the Senate's time now, except to say that the amendment that was included in this bill is critical because congressional guidance is needed where the Air force's conduct on its Tanker Lease Program has, to date, been unacceptable. With regard to the Boeing 767 Tanker Lease Program, the Department of Defense and the Air Force leadership have obfuscated, delayed, and withheld information from Congress and the taxpayers. Therefore, the tanker amendment attempts to make sure that any effort by the Air Force to replace its fleet of tankers is done responsibly. We should expect no less from the Air Force.

The adopted amendment does much to inject needed sunlight on a program whose development has been largely insulated from public scrutiny. It will allow us to discharge responsibly and effectively our oversight obligations the next time around on this multi-billion dollar procurement proposal.

The men and women of our nation's Armed Forces put their lives on the line every day to protect the very freedoms we as Americans hold dear. It is our obligation to provide key quality of life benefits to the members of our military. Great strides will be made by this bill towards accomplishing that goal. For example, this bill authorizes a 3.5 percent across-the-board pay raise for all military personnel. It also repeals the requirement for military members to pay subsistence charges while hospitalized, and adds $7.8 million for expanded care and services at the Walter Reed Amputee Patient Care Center. Also included in the legislation is a permanent increase in the rate of family separation allowance from $100 per month to $250 per month as well as a permanent increase in the rate of special pay for duty subject to hostile fire or imminent danger from $150 per month to $225 per month.

We continue to be increasingly reliant on the men and women of our Reserve forces and National Guard. In fact, 40 percent of all the ground troops in Iraq and Afghanistan are composed of National Guard and Reserve forces as well as nearly all of the ground forces in Kosovo, Bosnia, and the Sinai. Many of these soldiers and sailors leave behind friends, families, and careers to defend our Nation. Accordingly, it is the responsibility of policy makers to ensure that we look after the needs of these patriots. Included in the legislation is the authorization for full medical and dental examinations and requisite inoculations when reservists mobilize and demobilize as well as a new requirement for pre-separation physical examinations for members of the reserve component. This provision is critical to maintain, and in some circumstances, will help to increase the readiness of the Total Force.

The Senate also adopted an important amendment to authorize an increase in the size of our Army by 20,000. This increase is absolutely vital in our Army's ability to carry out its mission in the Global War on Terror. There is no shortage of evidence supporting an increase in Army end strength. Recently, the Army pulled 3,600 troops out of South Korea to fill critical needs in Iraq. The Army is also looking to deploy to Iraq the 11th Armored Calvary Regiment. This is an elite unit that serves in desert training exercises. In addition, for the first time in over 10 years, the Army is pulling people out of the Individual Ready Reserve to fill critical needs. The Department of Defense should be able to move troops around as needed to address critical needs, however, in this instance, we are sacrificing our readiness on the Korean

peninsula because we do not have enough soldiers serving in the Army.

After returning home for a short period of time, soldiers and Marines are already making preparations for their second tour in Iraq or Afghanistan in as many years. This is not good for morale, this is not good for retention, this is not good for readiness, and this is not good for the soldier's families. Eventually, recruitment will be seriously affected by these trends.

Additionally, the Army recently announced a new stop-loss policy. While I certainly recognize the Army's authority and necessity to issue stop loss orders, their issuance in this instance is yet another reason why we need to increase the size of the Army. For all the benefits in group cohesion that results from extended tours, the Army will be facing a serious crisis when it comes time for these soldiers to reenlist on their own accord. I am concerned about the effect that these stop-loss orders will have on the morale of our Army. While I still do not believe that we need a draft, we do need to increase the size of the Army to carry out important defense missions.

These are some aspects of this legislation that I do not support. For example, once again, this bill lent the opportunity for protectionist Buy America amendments. In a similar fashion as last year, the Senate had to beat back an amendment that sought to protect parochial interests at the cost of our defense industry and American jobs. It seems as if every year, we fight the same fight on the Senate floor.

A sound policy which the Senate has adopted in the past is that we need to provide American servicemen and women with the best equipment at the best price for the American taxpayer. This is the policy we need to continue to follow.

The international considerations of this amendment are immense. such an isolationist, go-it-alone approach would have serious consequences on our relationship with our allies. Furthermore, our country is threatened when we ignore our trade agreements. Currently, the U.S. enjoys a trade balance in defense exports of 6-to-1 in its favor with respect to Europe, and about 12-to-1 with respect to the rest of the world. We don't need protectionist measures to insulate our defense or aerospace industries. If we stumble down the road of protectionist policies, our allies will retaliate and the ability to sell U.S. equipment as a means to greater interoperability with NATO and non-NATO allies would be seriously undercut. Critical international programs, such as the Joint Strike Fighter and missile defense, would likely be terminated as our allies reassess our defense cooperative trading relationship.

On another important policy consideration, the Senate also successfully defeated an amendment aimed at canceling the upcoming BRAC round. BRAC has taken on a new significance in the War against Terror. Never has there been a time in recent memory when it has been more important not to waste money on non-essential expenditures. To continue to sustain an infrastructure that exceeds our strategic and tactical needs will make less funding available to the forces that we are relying on to destroy the international network of terrorism.

The Department of Defense has come out with very fair and reasonable criteria used to select what bases are chosen for BRAC. I have every confidence the Secretary of Defense will carry out this round of BRAC in a just and consistent manner. Sooner or later, surplus bases must be closed. Delaying or canceling BRAC would only make the process more difficult and painful than need be. The sooner the issue is addressed, the greater will be the savings that will ultimately go toward defense modernization and better pay and benefits for our hard-working service members.

I understand some of my colleagues may be concerned about the potential negative effects a base closure may have on their local economy. Previous base closure rounds have had many success stories. For example, after England Air Force Base closed in 1992, Alexandria, LA, benefited from the creation of over 1,400 jobs—nearly double the number of jobs lost. Across the U.S., about 60,000 new jobs have been created at closing military bases. At bases closed more than 2 years, nearly 75 percent of the civilian jobs have been replaced. This is not to say that base closures are easy for any community, but it does suggest that communities can and will continue to thrive.

Americans are blessed with nearly limitless freedoms and liberties. In exchange for all our country gives to us, it does not demand much in return. Yet throughout our history, millions of people have volunteered to give back to their nation through military service. The selfless acts of courage and sacrifice made by the men and women in our armed services have elevated our Nation to the greatness we enjoy today.

America is defined not by its power but by its ideals. One of the great strengths of the American public is the desire to serve a cause greater than our own self interest. All too often, our younger generations are accused of selfishness and an unwillingness to sacrifice. I disagree. I see generations of people yearning to serve and help their fellow citizens. Each year, thousands of our young Americans decide to dedicate a few years or even a full career to protecting the rights and liberties of others. They often do this with very real risks to their lives. They volunteer to do this not for profit, nor for self-promotion, but out of a sense of duty, service, and patriotism.

I urge my colleagues to support this important legislation.

Mr. WARNER. Mr. President, I wish to thank so many who made possible the next vote. First, our leadership and the members of our committee, our committee staff, and particularly my distinguished ranking member, with a special thanks to both the Democratic whip and the Republican whip for their special time on the floor.

I ask for the third reading of the bill.

The PRESIDING OFFICER. The question is on the engrossment and the third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. WARNER. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The bill having been read the third time, the question is, Shall the bill pass?

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Kansas (Mr. BROWNBACK) and the Senator from New Hampshire (Mr. SUNUNU) are necessarily absent.

I further announce that if present and voting the Senator from Kansas (Mr. BROWNBACK) would vote ''yea.''

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 97, nays 0, as follows:

[Rollcall Vote No. 146 Leg.]

YEAS—97

Akaka	Dole	Lott
Alexander	Domenici	Lugar
Allard	Dorgan	McCain
Allen	Durbin	McConnell
Baucus	Edwards	Mikulski
Bayh	Ensign	Miller
Bennett	Enzi	Murkowski
Biden	Feingold	Murray
Bingaman	Feinstein	Nelson (FL)
Bond	Fitzgerald	Nelson (NE)
Boxer	Frist	Nickles
Breaux	Graham (FL)	Pryor
Bunning	Graham (SC)	Reed
Burns	Grassley	Reid
Byrd	Gregg	Roberts
Campbell	Hagel	Rockefeller
Cantwell	Harkin	Santorum
Carper	Hatch	Sarbanes
Chafee	Hollings	Schumer
Chambliss	Hutchison	Sessions
Clinton	Inhofe	Shelby
Cochran	Inouye	Smith
Coleman	Jeffords	Snowe
Collins	Johnson	Specter
Conrad	Kennedy	Stabenow
Cornyn	Kohl	Stevens
Corzine	Kyl	Talent
Craig	Landrieu	Thomas
Crapo	Lautenberg	Voinovich
Daschle	Leahy	Warner
Dayton	Levin	Wyden
DeWine	Lieberman	
Dodd	Lincoln	

NOT VOTING—3

Brownback	Kerry	Sununu

The bill (S. 2400) was passed.

(The bill will be printed in a future edition of the RECORD.)

Mr. WARNER. Mr. President, I move to reconsider the vote.

Mr. LEVIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. WARNER. Mr. President, I ask unanimous consent that S. 2400 as amended be printed as passed.

The PRESIDING OFFICER. Without objection.

Mr. WARNER. Mr. President, I ask unanimous consent that the Senate proceed immediately to the consideration en bloc of S. 2401 through S. 2403—Calendar Order Nos. 504, 505 and 506; that all after the enacting clause of those bills be stricken and the appropriate portion of S. 2400, as amended, be inserted in lieu thereof, according to the schedule which I am sending to the desk; that these bills be advanced to third reading and passed; that the motions to reconsider en bloc be laid upon the table; and that the above actions occur without intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

DEPARTMENT OF DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005

The bill (S. 2401) to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

(The text of the bill will be printed in a future edition of the RECORD.)

MILITARY CONSTRUCTION AUTHORIZATION ACT FOR FISCAL YEAR 2005

The bill (S. 2402) to authorize appropriations for fiscal year 2005 for military construction, and for other purposes, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

(The text of the bill will be printed in a future edition of the RECORD.)

DEPARTMENT OF ENERGY NATIONAL SECURITY ACT FOR FISCAL YEAR 2005

The bill (S. 2403) to authorize appropriations for fiscal year 2005 for defense activities of the Department of Energy, and for other purposes, was considered, ordered to be engrossed for a third reading, read the third time, and passed as follows:

(The text of the bill will be printed in a future edition of the RECORD.)

Mr. WARNER. Mr. President, with respect to H.R. 4200—Calendar Order No. 537—the House-passed version of the National Defense Authorization Act for Fiscal Year 2005, I ask unanimous consent that the Senate turn to its immediate consideration; that all after the enacting clause be stricken and the text of S. 2400, as passed, be substituted in lieu thereof; that the bill be advanced to third reading and passed; that the Senate insist on its amendment to the bill and request a conference with the House on the disagreeing votes of the two Houses, and the Chair be authorized to appoint conferees; that the motion to reconsider the above-mentioned votes be laid upon the table; and that the foregoing occur without intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. DASCHLE. Mr. President, reserving the right to object, we are not prepared to go to conference tonight. We will consult with some of our colleagues tomorrow morning, and we certainly have no intention of delaying conference. But it is our hope that we will have an opportunity to consult a little bit more about some of the issues we expect to be raised.

For that purpose, I object to the portion of the request which would allow the conference to begin.

The PRESIDING OFFICER. Objection is heard.

Without objection, H.R. 4200, as amended, is passed.

Mr. WARNER. Mr. President, that concludes the matters addressing the bill. I thank the leadership of both sides, members of our committee, and the wonderful, fine staff we have, particularly my staff, Mrs. Ansley, and my good colleague over here, my partner for these 26 years we have been in the Senate. Guess we landed another one, not necessarily in record time. Our calculation is 16 legislative days. So perhaps we have set something of a record as the days were fairly consecutive.

I thank the chief of staff sitting here. Thank you, Captain.

Mr. LEVIN. Mr. President, as always, the Senate is very much in the debt of our chairman, JOHN WARNER, an extraordinary human being and leader. This could not have happened without his leadership.

My staff, Dick Debobes, and all of our minority staff deserve extraordinary credit for getting this done. It would have taken twice as long but for our staff. I don't know—16 legislative days. It would have been double that number of days but for our staff, Judy Ansley and her staff. We thank them. Our staff worked together on a bipartisan basis. The Nation and our men and women in the Armed Forces owe them a huge debt. It is our staff—they will never know the names of our staff, probably, but they will be safer, more secure, better trained, better equipped, and have better benefits because of the work of our staff and the members of our committee who worked on a bipartisan basis under the leadership of JOHN WARNER.

Again, I take my hat off to our chairman. He has really done a wonderful job on this bill. It took a little longer than expected, but again we worked through a huge number of amendments, perhaps a record number of amendments.

Mr. WARNER. I thank my friend. These many years we have worked, really, as partners, and achieved one of the highest degrees of bipartisanship in the discharge of our respective responsibilities, together with the staffs.

Mr. LEVIN. Mr. President, we would not be at this point in our deliberations were it not for the extraordinary work and cooperation on a bipartisan basis of all of our committee members and all of our committee staff. Once again, our Committee and the Senate have put the interests of our country first and we all can be very proud of that.

I take just a moment to acknowledge and thank the minority staff members of the Committee on Armed Services for their extraordinary work on S. 2400, the National Defense Authorization Act for Fiscal Year 2005. You don't get to final passage of this massive and important bill without having staff who are willing to give hours and hours of hard work and make many personal sacrifices. The committee and the Senate are so fortunate to have men and women of their expertise and dedication so ably assisting us on this bill. Rick DeBobes leads our minority staff of seventeen. Though small in numbers, they all make huge contributions to the work of the committee each and every day. Mr. President, as a tribute to their professionalism and with my thanks, I recognize Chris Cowart, Dan Cox, Madelyn Creedon, Mitch Crosswait, Rick DeBodes, Brie Eisen, Evelyn Farkas, Richard Fieldhouse, Creighton Greene, Jeremy Hekhuis, Bridget Higgins, Maren Leed, Gary Leeling, Peter Levine, Mike McCord, Bill Monahan, and Arun Seraphin.

Mr. WARNER. Mr. President, I ask unanimous consent to have the names of staff printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

COMMITTEE ON ARMED SERVICES

Judith A. Ansley, Charles W. Alsup, Michael N. Berger, June M. Borawski, Leah C. Brewer, Alison E. Brill, Jennifer D. Cave, L. David Cherington, Marie Fabrizio Dickinson, Regina A. Dubey, Andrew W. Florell, Brian R. Green, William C. Greenwalt, Ambrose R. Hock, Gary J. Howard, Jennifer Key, Gregory T. Kiley, Thomas L. MacKenzie, Elaine A. McCusker, Lucian L. Niemeyer, Cindy Pearson, Paula J. Philbin, Lynn F. Rusten, Joseph T. Sixeas, Scott W. Stucky, Diana G. Tabler, Richard F. Walsh, Bridget E. Ward, Nicholas W. West, and Pendred K. Wilson.

Mr. WARNER. I am happy at this time to yield the desk back to the majority leader. I hope I never see this again for another year.

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. I think the most recent tribute by each of the managers to each other is yet another illustration of the kind of bipartisanship that is so routinely achieved in the Armed Services Committee. Thanks for the extraordinary leadership and effort of

these two genuine patriots. I admire the work they do. They set a standard for the rest of us. I admire, especially, the manner with which they have managed this legislation. This has been one of the toughest jobs we have had in a long time. They have done it admirably. We owe them a debt of gratitude, not only for the work done but for the manner with which they have done it. I congratulate them both.

Mr. WARNER. I thank the distinguished minority leader very much for his words.

Mr. FRIST. I, too, congratulate both of the managers. It has been a long month. It has been 16 days, but since March 17 we actually started the bill. There was a lot in the background people did not see in terms of progress being made, setbacks along the way and negotiations and discussions, both inside each caucus as well as debate on the floor. It is a real privilege to be the leader of both managers and of both caucuses, working together to produce a bill that a few minutes ago we passed, a bill we can all be very proud of. I appreciate everyone's cooperation, participation, diligence, and focus throughout.

Mr. WARNER. I thank our distinguished majority leader, truly a very gracious soul and of pure heart.

Mr. FRIST. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

CHANGE OF VOTE

The PRESIDING OFFICER. The Senator from Oregon.

Mr. SMITH. Mr. President, I ask unanimous consent that my vote on amendment No. 3352 to S. 2400, rollcall No. 129, be changed to yea. I understand this will not change the outcome of the vote.

The PRESIDING OFFICER. Without objection, it is so ordered.

LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Mr. President, I today speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Enhancement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

In March 1999 in Decatur, IL, a university student was beaten by three men who allegedly made anti-gay remarks.

Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. By passing this legislation and changing current law, we can change hearts and minds as well.

HONORING USCG COMMANDER TIMOTHY ALAN COOK

Mrs. MURRAY. Mr. President, I rise today to honor Commander Timothy Alan Cook for his service to the United States Senate and his continued service to our country in the United States Coast Guard.

Commander Cook has been detailed to be the Coast Guard Liaison to the United States Senate since July 2001, and I am proud to have had the opportunity to work closely with him over the past 3 years. In my leadership roles on the Transportation and Homeland Security Appropriations Subcommittees, my staff and I have often relied on Commander Cook's tremendous grasp on the inner-workings of both the Coast Guard and the Senate.

Commander Cook began his Senate career in 1997 as the Coast Guard Fellow to the Commerce, Science, and Transportation Committee, Oceans and Fisheries Subcommittee. However, his Coast Guard career began more than a decade earlier as a 1986 graduate of the U.S. Coast Guard Academy.

Then-Ensign Cook's first tour was as Deck Watch Officer aboard the Medium Endurance Cutter DAUNTLESS (WMEC 624) then stationed in Miami Beach, FL. In 1988 he became Executive Officer of the Fast Patrol Boat MANITOU (WPB 1302) also stationed in Miami Beach, FL.

He was selected for the Coast Guard Academy Postgraduate Instructor Program in 1990 and attended Duke University where he received his Master of Arts degree in Public Policy. CDR Cook taught U.S. History and American Government in the Coast Guard Academy Humanities Department from 1992 to 1995. During this period he also qualified as Deck Watch Officer on the Coast Guard Tall Ship EAGLE (WIX 327).

In 1995 he assumed Command of the Fast Patrol Boat MAUI (WPB 1304) stationed in Miami Beach, FL. During this time he also completed a Master of Arts degree in Political Science from Brown University.

Then, following his service at the Senate Commerce Committee, Commander Cook became Executive Officer of the Medium Endurance Cutter BEAR (WMEC 901) at the mid-point of its 106-day Mediterranean cruise. During his tour he completed numerous patrols in the Caribbean conducting the Coast Guard law enforcement and search and rescue missions.

This week, Commander Cook will leave his post as the Coast Guard's Senate Liaison. He will be missed in the United States Senate, but the Coast Guard needs his expertise on the Deepwater Acquisition Program.

It has been my pleasure to work with Commander Cook. On behalf of the Senators and staff who have also been fortunate to work with him, I wish Commander Cook, his wife Nancy and their two sons, Evan and Joel, the best in all of their future endeavors.

RHODE ISLAND VETERANS POST OFFICE BUILDING

Mr. REED. Mr. President, I am pleased that the Senate passed legislation, H.R. 3942, earlier this month to redesignate the U.S. Post Office in Middletown the ''Rhode Island Veterans Post Office Building,'' and I thank Congressman PATRICK KENNEDY for introducing this important legislation in the House of Representatives. I recognize the important contributions and sacrifices that our military veterans have made for our country. The celebration of the 60th anniversary of the D-Day invasion at Normandy this month again highlighted the great sacrifices that our brave soldiers have made, and continue to make today in Afghanistan, Iraq and throughout the world. I am proud to support naming the U.S. Post Office in Middletown in their honor.

LAW ENFORCEMENT OFFICERS SAFETY ACT

Mr. LEAHY. Mr. President, I am pleased to note the House passage today of the Law Enforcement Officers Safety Act, H.R. 218, by voice vote. This action has been a long time in coming. Representative RANDY ''DUKE'' CUNNINGHAM has been tirelessly working for over a decade to push this legislation and I commend him for his dedication to making our communities safer and providing better protection for our law enforcement personnel. I ask that the Senate follow suit and quickly take up and pass the House bill.

Law enforcement officers are never ''off duty.'' They are dedicated public servants trained to uphold the law and keep the peace. To enable law enforcement officers nationwide to be prepared to answer a call to duty no matter where, when or in what form it comes, I am proud to join Senator CAMPBELL—my good friend and a knowledgeable Senate leader on law enforcement issues—and 69 other cosponsors, including Judiciary Chairman HATCH, Democratic Leader DASCHLE, Assistant Democratic Leader REID, Majority Leader FRIST and Assistant Majority Leader MCCONNELL, on the Senate version of the Law Enforcement Officers Safety Act, S. 253,

which was reported out of the Senate Judiciary Committee in March 2003 by a vote of 18 to 1. Both H.R. 218 and S. 253 will permit off-duty and retired law enforcement officers to carry a firearm and be prepared to assist in dangerous situations.

These bills are strongly supported by the Fraternal Order of Police, FOP; the National Association of Police Organizations, NAPO; the Federal Law Enforcement Officers Association, FLEOA; the International Brotherhood of Police Officers, IBPO; the Law Enforcement Alliance of America; and the National Law Enforcement Council.

I was honored to work closely on this measure with the former FOP national president, Lieutenant Steve Young, whose death last year was a sad loss for us all. Steve was dedicated to this legislation because he understood the importance of having law enforcement officers across the Nation armed and prepared whenever and wherever threats to our public safety arise. I have continued my close work with the FOP and current national president, Major Chuck Canterbury, to make this legislation law.

Community policing and the outstanding work of so many law enforcement officers play a vital role in our crime control efforts. Unfortunately, during the past few years the downward trend in violent crime ended and violent crime rates have turned upward. The FBI has reported that crime rose slightly in the first half of 2002, including a 2.3 percent increase in murders. The preliminary numbers for 2002 follow an increase in crime in 2001 by 2.1 percent, compared with the year before.

There are more than 740,000 sworn law enforcement officers currently serving in the United States. Since the first recorded police death in 1792, there have been more than 17,200 law enforcement officers killed in the line of duty. Over 1,700 law enforcement officers died in the line of duty over the last decade, an average of 170 deaths per year. Roughly 5 percent of officers who die are killed while taking law enforcement action in an off-duty capacity. On average, more than 62,000 law enforcement officers are assaulted annually.

The Law Enforcement Officers Safety Act creates a mechanism by which qualified active-duty law enforcement officers would be permitted to travel interstate with a firearm, subject to certain limitations, provided that officers are carrying their official badges and photographic identification. An active-duty officer may carry a concealed firearm under this measure if he or she is authorized to engage in or supervise any violation of law; is authorized to use a firearm by the agency, meets agency standards to regularly use a firearm; and is not prohibited from carrying by Federal, State or local law. This measure would not interfere with any officer's right to carry a concealed firearm on private or government property while on duty or on official business.

Off-duty and retired officers should also be permitted to carry their firearms across State and other jurisdictional lines, at no cost to taxpayers, in order to better serve and protect our communities. H.R. 218 would permit qualified law enforcement officers and qualified retired law enforcement officers across the Nation to carry concealed firearms in most situations. It preserves any State law that restricts concealed firearms on private property and any State law that restricts the possession of a firearm on State or local government property.

To qualify for the measure's exemptions to permit a qualified off-duty law enforcement officer to carry a concealed firearm, notwithstanding the law of the State or political subdivision of the State, he or she must have authority to use a firearm by the law enforcement agency where he or she works; not be subject to any disciplinary action; satisfy every standard of the agency to regularly use a firearm; not be prohibited by Federal law from receiving a firearm; and carry a photo identification issued by the agency. The bill preserves any State law that restricts concealed firearms on private property, and any State law that restricts the possession of a firearm on State or local government property or park.

For a retired law enforcement officer to qualify for exemption from State laws prohibiting the carrying of concealed firearms, he or she must have retired in good standing; have been qualified by the agency to carry or use a firearm; have been employed at least 15 years as a law enforcement officer unless forced to retire due to a service-connected disability; have a non-forfeitable right to retirement plan benefits of the law enforcement agency; meet the same State firearms training and qualifications as an active officer; not be prohibited by Federal law from receiving a firearm; and be carrying a photo identification issued by the agency. Preserved would be any State law that permits restrictions of concealed firearms on private property, as well as any State law that restricts the possession of a firearm on State or local government property or park.

Last week, during the House Judiciary Committee markup of H.R. 218, amendments were accepted to bar officers or retired police from carrying arms in other jurisdictions if they are under the influence of alcohol or other intoxicating or hallucinatory drug or substance, and to require retired police to have proof they received arms training in the previous year before being permitted to carry concealed weapons. The bill was then reported out of committee by a vote of 23 to 9. The bill was passed overwhelmingly by the House earlier today by voice vote.

Convicted criminals often have long and exacting memories. A law enforcement officer is a target in uniform and out, active or retired, on duty or off duty. The bipartisan Law Enforcement Officers Safety Act is designed to establish national measures of uniformity and consistency to permit trained and certified on-duty, off-duty, or retired law enforcement officers to carry concealed firearms in most situations so that they may respond immediately to crimes across State and other jurisdictional lines, as well as to protect themselves and their families from vindictive criminals.

I look forward to the Senate approving this bipartisan, commonsense measure today to make our communities safer and to better protect law enforcement officers and their families.

EXEMPTION FROM TRUST REFORM REORGANIZATION

Mr. JOHNSON. Mr. President, I rise today in support of S. 2523, a bill to exempt the Great Plains Region and Rocky Mountain Region of the Bureau of Indian Affairs, BIA, from trust reform reorganization plans. I am happy to be an original cosponsor of this bill with my friend and colleague Senator TOM DASCHLE.

S. 2523 would exempt the BIA's Great Plains Region and the Rocky Mountain Region from the Department of the Interior's trust reform reorganization proposal, excluding efforts to reform Indian probate and address land consolidation, pending the submission of alternative agency-specific reorganization plans. The bill would direct that any funds appropriated to accomplish trust reform at the agency level in the Great Plains and Rocky Mountains Regions could be expended only under plans developed by local tribes in cooperation with and with the approval of the Department of the Interior. The bill authorizes $200,000 for the Great Plains Region and $200,000 for the Rocky Mountain Region to be used for the development of agency-specific reorganization plans.

The bill is an alternative to the Department of the Interior's ''To-Be'' trust reorganization plan. The BIA and the Office of Special Trustee, OSI, is in a state of ongoing reengineering of their trust management processes since the Department issued a new Department Manual in April, 2003. Since November, 2003, the Department has conducted informational meeting regarding its ''To-Be'' project, which would reengineer current fiduciary trust business process. This ''To-Be'' plan is unacceptable to our tribes. Simply, the administration's proposed changes to the way tribes receive trust services do not fit the needs of our area.

Specifically, our tribes require frequent land appraisals due to our large land base. Currently there is only one appraiser for the entire Great Plains Region. Under a proposed plan, money that would be spent hiring ''trust officers'' would be utilized by hiring appraisers at each agency on each reservation. Furthermore, as a region we

are in need of technical positions involving land management, such as surveyors, range conservationists, lease compliance officers, rights of way specialists, and accountants. In sum, the tribes request a reversal of the reorganization process and that resources be redirected as to be more effectively used at the reservation level under control of the local agent.

The concepts in S. 2523 are particularly poignant in light of serious questions that have been raised regarding failures in the OST's entire management and administrative system. As a result of these questions, I have requested a wide-ranging investigation of the OST. This investigation centers on a number of concerns tribal leaders have raised in recent years as OST has expanded its mission from one designed to oversee trust reform efforts at the Interior Department to one implementing most major fixes. Under the Bush administration, the agency's budget has dramatically increased while funds for other Indian programs are being cut or flat-lined.

In addition to questioning funding considerations, I question whether the OST is operating in a manner consistent with the 1994 Act that created it. During the Bush administration, the agency has seen unprecedented growth and has slowly taken over programs formerly managed by BIA, including cash management, appraisals, probate and accounting. Tribal leaders and some lawmakers say this expansion violates the intent of Congress in creating the office.

I am honored to represent a State that has nine treaty tribes. Federally-recognized Indian tribes in South Dakota signed the Treaty of Fort Laramie with the desire to declare peace and thereby perpetuate a nation-to-nation relationship with the Federal Government. The treaty establishing the South Dakota Tribes is a contract negotiated between sovereign nations, relating to peace and alliance formally acknowledged by the signatories of the nations. The United States entered into such agreement because they desired peace and cessions of land from the Sioux Tribes, and in return they made promises that must be upheld.

It is important to point out that my treaty tribes opt to receive their services directly from the BIA. As such, it is essential to my tribes that they have a clear understanding of what their Bureau is up to and how its actions will affect the services received by my tribes. In South Dakota, the BIA affects our Indian people every single day. Their partnership with the Federal Government is paramount to their survival as nations and is vital to the health of its people. With this premise in mind, I implore the Department to do a better job of consulting with tribes, appropriately fund BIA programs, and have an open and frequent dialogue with Congress. As a member of both the Appropriations and Indian Affairs Committee, I must be made aware of the Bureau and the Office of Special Trustee's programming plans.

S.J. RESOLUTION 37

Mr. JOHNSON. Mr. President, I rise today in support of S.J. Resolution 37, a resolution to acknowledge a long history of official depredations and ill-conceived policies by the United States Government regarding Indian tribes and offer an apology to all native peoples on behalf of the United States.

A formal apology is the first appropriate step in reconciling relationships with Indian tribes and native peoples. However, an apology by itself is not enough to heal the wounds inflicted by some of the devastating policies adopted by our government. To really make amends with Indian tribes and native peoples, our government needs to return to the original understanding of the Federal–tribal relationship. The foundation of the Federal–tribal relationship is rooted in our great Constitution and the Indian treaties ratified pursuant to it. When a person reads the Founder's words pertaining to the sovereignty of Indian tribes, in conjunction with the early laws and treaties ratified by our government, he or she quickly realizes that the underpinnings of the Federal–tribal relationship is based upon mutual respect, trust responsibility, and the idea that our government must obtain consent from Indian tribes and native peoples before any Federal action can be taken.

Almost every Indian treaty recognizes that Indian tribes have control over their lands and that our government could not assert authority or take lands away from tribes unless there is an articulation of tribal consent. The first treaty our government signed with an Indian Nation was the 1778 Treaty of Fort Pitt. During the American Revolutionary War, our government signed this treaty to obtain permission from the Delaware Nation to allow General Washington's army to cross through their territory. If the Delaware Nation would not have permitted this crossing, the history of our United States might have turned out drastically differently.

As history teaches, when our government swayed away from the foundation of the Federal–tribal relationship, Indian tribes and native peoples suffered. For example, in 1830, Congress narrowly passed the Removal Act to remove all Native Americans west of the Mississippi River. However, the text and legislative history of the Removal Act clearly demonstrates that removal would not occur unless there was tribal consent. Because many Cherokee did not consent to being removed, in 1838, our government forced their removal, thus resulting in the Trail of Tears tragedy.

Chairman J.C. Crawford of the Sisseton–Wahpeton Tribe wrote to remind me that in 1862 nearly 400 Dakota Indians were tried by a military court without legal representation following a conflict arising out of our government not adhering to its treaty obligations. Eventually, on December 26, 1862, 38 Dakota men were hanged. To date, this has been the largest mass execution in American history.

Our government violated the 1868 Fort Laramie Treaty. Under the Fort Laramie Treaty, our government agreed that if any land is to be taken from the Lakota Nation, three-fourths of all adult males must agree to any cession. Because our government failed to obtain Lakota consent, three prominent historical tragedies occurred, the Battle of Little Big Horn, the Wounded Knee Massacre, and the taking of the Black Hills.

Additionally, in the late 1800s, our government violated numerous treaties and embarked upon a harsh assimilationist policy that ignored the foundations of the Federal–tribal relationship. For example, in 1887 our government enacted the General Allotment Act. Under the General Allotment Act, tribal lands were broken up, thus reducing tribal lands from 138 million acres in 1887 to 48 million acres in 1934. Although our government ended the harsh policies contained in the General Allotment by enacting the 1934 Indian Reorganization Act, by the 1950s our government quickly reversed course and implemented legislation that terminated the Federal–tribal relationship with some Indian tribes. Although many Indian tribes have been successful with regaining federal recognition status, some have not been as successful.

Currently, our government is committed to tribal self-determination and empowering tribal governments. However, to make this apology complete and to demonstrate that our government is sincere in apologizing to Indian tribes and native peoples, our government needs to allocate more resources to Indian tribes and native peoples and fulfill its trust obligation found in treaties and concurrent legislation.

Our government has adopted numerous laws and policies that undermined and adversely impacted the Federal–tribal relationship. For those reasons, I strongly support the apology articulated in S.J. Resolution 37. I urge my colleagues to similarly support this resolution and reflect on the meaning of the Federal–tribal relationship.

ADDITIONAL STATEMENTS

HONORING THE ACCOMPLISHMENTS OF ALLISON HAMMER

• Mr. BUNNING. Mr. President, I pay tribute and congratulate Allison Hammer of Summer Shade, KY, on being named a distinguished finalist for the Prudential Spirit of Community Awards. This award honors young people in middle level and high school grades for outstanding volunteer service to their communities.

Allison Hammer has proven herself to be an ideal volunteer. While she is only 14 years old, she has already done more volunteer work than many people will do in their whole life. After two of her friends were killed in an All-Terrain Vehicle (ATV) accident, she took it upon herself to start a 75-person ATV safety camp for the youths of Monroe County. In this excellent effort she recruited volunteers and raised the funds to make this camp a success.

The citizens of Monroe County are fortunate to have a young woman like Allison Hammer in their community. Her example of dedication, hard work and compassion should be an inspiration to all throughout the entire Commonwealth.

She has my most sincere appreciation for this work and I look forward to her continued service to Kentucky.●

RECOGNIZING KIMBERLY JOHNSON-SMITH

● Mr. ALLEN. Mr. President, I today recognize Kimberly Johnson-Smith for her community service and leadership. For over 16 years, Mrs. Johnson–Smith has selflessly lent her time and talents on behalf of various civic groups in Arlington County.

In addition to being a member of the Arlington County Civic Federation, Kimberly Johnson-Smith has held various leadership positions in the County, including: chairperson of the Executive Committee, co-chair of the Public Safety Committee, and co-chair of the 911 Scholarship Fund, which raised over $150,000 dollars for college-bound children of Arlington County public safety personnel. Mrs. Johnson–Smith was also a member of the Arlington Citizen Corps Council where she was the Chairperson for the Public Education for Emergency Preparedness task group as well as the planner and advisor for Arlington Prepares Door-to-Door. In addition, she was a founding member, advisor and scheduler of Arlington County Community Emergency Response Team.

Mrs. Johnson-Smith also spent time at the Arlington Animal Welfare League and helped establish Puppy Parties for Arlington Dogs. She was a member and past board member of the Arlington Outdoor Education Association and also involved herself in the Sheriff's Department and Crime Prevention Council's ''SOS'' program for seniors.

Among her professional recognitions, Kimberly Johnson-Smith was the recipient of the Journal Cup for Civic Activity and the President's Award for Civic Acts.

Arlington County will surely miss the great leadership and talents that Kimberly Johnson-Smith displayed in all of her activities. I congratulate her on her community service and wish her and her family well in their move to Madison County.●

RECOGNIZING HARRY C. MASON, JR.

● Mr. ALLEN. Mr. President, I am pleased to recognize Mr. Harry C. Mason, Jr. for his community service and leadership. Mr. Mason recently ended his 8-year term serving the citizens of the Town of Orange on the Orange Town Council. During his time as a councilman, Orange saw significant improvement in its quality of life; the town saw the design of a Raw Water Storage Basin project, improvements to the town's infrastructure, design of the new Public Works facility, the launch of the town's first public transit system, and the development of the road to the new middle school.

Throughout his life, Harry Mason has been a community leader and volunteer. He is an esteemed business person of the town of Orange and is an active member of the Orange County Chamber of Commerce and Orange Rotary Club. Mr. Mason is also a strong supporter of the Orange Volunteer Fire Department and Rescue squad. In addition, he participates in and sponsors the Orange County Public School System breakfast buddies program.

The Town of Orange will surely miss the leadership and talents that Councilman Mason displayed on the town council and would like to recognize him for his commitment to Orange. I congratulate him on his community service and wish him well in the future.●

RECOGNIZING EKATERINA MIKHAILOVICH RADZHABOVA

● Mr. ALLEN. Mr. President, I wish to honor Miss Ekaterina Mikhailovich Radzhabova who graduated this month with a master's degree in business from Xavier University in Cincinnati, OH. Miss Radzhabova is a Russian immigrant who came to the United States 5 years ago, at the age of 19, to seek an education and a better way of life.

Since coming to America, Miss Radzhabova has completed both her undergraduate and graduate programs at Xavier with the highest possible honors. This is particularly impressive considering that she accomplished this while speaking her second language, English.

Miss Radzhabova has not only proven herself dedicated through her hard work at school, but also through the volunteer work that she has performed in her extra time to help inner city children develop better skills in reading and arithmetic. On the weekends, she drives outside the city to help an elderly family with chores that they can no longer do on their own. Indeed, through her hard work and service, she has clearly demonstrated the American ideal of helping those who are less fortunate. Miss Radzhabova is not only an inspiration to the youth of Russia but also to all of our young Americans.

During her graduation ceremony this month, Ekaterina Radzhabova was surrounded by many of the friends that she made while living in the United States. Unfortunately, her family was unable to attend the ceremonies. One of those family members was her father, Mikhail Radzhabova, who passed away in October 2001. It was his dream to have his family come to the United States after the fall of the Soviet Union. Although her father was not able to attend the ceremony in person, I am sure that he was there in spirit, looking proudly upon his daughter, knowing that she had helped make his dream a reality. Unfortunately, her mother and brother were denied visas to attend her graduation. But, like her father, they are undoubtedly proud of her accomplishments.

Miss Radzhabova is a talented young woman who has overcome a great deal since she came to America to pursue her dream. She has proven to be a great success in her new country by not only accomplishing part of her father's dream, but also by inspiring countless people around her with her positive attitude and determination to succeed.●

EAST BRUNSWICK HIGH SCHOOL PLACING FIRST AT THE WE THE PEOPLE: THE CITIZEN AND THE CONSTITUTION PROGRAM

● Mr. LAUTENBERG. Mr. President, today I want to recognize students from East Brunswick High School in East Brunswick, NJ who placed first at the national finals for the We the People: The Citizen and the Constitution program. The national finals of the program simulates a congressional hearing whereby students testify as constitutional experts before a panel of judges. The students from East Brunswick defeated classes from every other State.

The program is administered by the Center for Civic Education and features an intensive curriculum which provides students with a fundamental understanding of the Constitution and the Bill of Rights and the principles and values they embody. More than 26.5 million students have participated in program during the last sixteen years.

I congratulate East Brunswick High School teacher Alan Brodman, State Coordinator Arlene Gardner, and District Coordinator Cole Kleitsch. I also congratulate the students on the East Brunswick team: Kian Barry, Patrick Bell, Kathleen Cammidge, Jessica Castles, Jennifer Chen, Ryan Citron, Jenna Elson, Daniel Gartenberg, Scott Goldschmidt, David Goldstein, Kristen Hamaoui, Marc Mondry, Jason Noah, Eric Nowicki, Nicholas Parals, Greg Parnas, Jessica Rebarber, Joa Roux, Blake Segal, Jody Shaw, Andrew Silver, Jeffrey Smith, Daniel Temkin, Abraham Tran, Arln Tuerk, and Haiwei Wang.●

30TH ANNIVERSARY OF NEW JERSEY ALLIANCE FOR ACTION

• Mr. LAUTENBERG. Mr. President, I congratulate The New Jersey Alliance for Action on its 30th Anniversary. For three decades the Alliance for Action has been New Jersey's foremost advocate of investment in infrastructure to benefit my home state's economy, environment, and overall quality of life.

New Jersey is the most densely populated state in the nation and we need to continually update infrastructure to help support our growing population. Most importantly, however, is that everyone at Alliance for Action understands how important their mission is. The organization is dedicated to working with legislators of both parties to accomplish their goals.

With the population of the United States and the world increasing rapidly, it is important to have organizations such as New Jersey Alliance for Action which works to support New Jersey's residents.

I ask my colleagues to join me in congratulating the New Jersey Alliance for Action on their 30th anniversary.•

HONORING CAPTAIN CHRIS CHRISTOPHER

• Ms. LANDRIEU. Mr. President, I speak today to honor the service of CPT Chris Christopher, who is currently the deputy director for future operations, communications and business initiatives at NMCI. Captain Christopher comes to this position after nearly 20 years of distinguished service to the Navy in the fields of aviation, public affairs, and intelligence.

Captain Christopher has spent most of his life in New Orleans, and he has made a wonderful home there with his wife Patti and their two daughters. He received undergraduate and graduate degrees from the University of New Orleans, and his work with NMCI still brings him back to the UNO campus. Though he is now stationed in Virginia, his heart and family remain in New Orleans. As a Louisiana Senator, I like that.

Captain Christopher's work at NMCI has been truly outstanding. The Navy Marine Corps Intranet is a progressive project whose ultimate goal is to transform the Department of the Navy's computer networks. NMCI will revolutionize command and control efficiencies within the Navy, and between the services, to ensure that our forces are operating in unison. This will save American lives, increase combat readiness and effectiveness, and, ultimately, make us stronger. Under Captain Christopher's leadership, many of these goals have been brought closer to reality.

From June 20 to 23, Captain Christopher organized the 2004 Navy Marine Corps Intranet Symposium in New Orleans. This event was an opportunity for all parties involved in NMCI to continue their dialogue on reshaping information technology in the Navy and Marine Corps. Captain Christopher made this event happen, and according to all parties involved, it was a complete success.

I once again thank my friend, CPT Chris Christopher, for his efforts on America's behalf. Future generations of sailors and marines will no doubt reap the benefits of his labor and America will be safer as a result. I am proud of your 'Louisiana-bred' success Chris, and I wish you well in your future endeavors.•

RECOGNIZING THE CONNECTICUT FOREST AND PARK ASSOCIATION

• Mr. LIEBERMAN. Mr. President, today I wish to honor the Connecticut Forest and Park Association of Rockfall, CT, on the occasion of the 75th Anniversary of the creation of its Blue Blazed Hiking Trail System. The Connecticut Forest and Park Association is Connecticut's oldest conservation organization and Connecticut's citizens owe this organization a great debt of gratitude for all it has done to protect Connecticut's precious natural resources.

Undoubtedly, the Blue Blazed Hiking Trail System is the crowning achievement in a long list of accomplishments that the Connecticut Forest and Park Association has realized since its founding in 1895. IN 1929, Edgar L. Heermance led a group of Connecticut Forest and Park Association members in establishing the Blue Blazed Hiking Trail System. Mr. Heermance and the dedicated group of volunteers that he led had a vision of a Statewide system of hiking trails that would serve to increase opportunities for all Connecticut residents to enjoy the outdoors and develop an appreciation for the immense beauty of the natural world. The first section of the Blue Blazed Hiking Trail system opened in 1931 and by 1937 the volunteers of the Connecticut Forest and Park Association had developed over four hundred miles of trails and published the Connecticut Walk Book; the first guidebook to the Blue Blazed Hiking Trail System.

Seventy-five years after Edgar Heermance made his vision of a Statewide hiking trail system a reality, the blue Blazed Hiking Trail System has over ninety volunteer Trail Managers and hundreds of active volunteers donating over 7,000 of their time each year to this spectacular system of hiking trails. Currently, the Blue Blazed Hiking Trail System encompasses over seven hundred miles of trails in 69 Connecticut towns. In a true testament to the spirit of cooperation that led to the founding of this hiking trail network, over seventy-five percent of the land included in the Blue Blazed Hiking Trail System is privately owned and exists only through the cooperation of private landowners who are interested in promoting conservation and increasing outdoor recreational opportunities.

This dynamic organization has continually both literally and figuratively blazed a trail for other conservation organizations to follow. I have confidence that the Connecticut Forest and Park Association and the Blue Blazed Hiking Trail System will enjoy continued success for many generations to come.

Congratulations to the Connecticut Forest and Park Association on the creation of a remarkable legacy of leadership and excellence in the areas of conservation and outdoor recreation.•

RETIREMENT OF MAJOR GENERAL JOHN ''GENE'' PRENDERGAST

• Mr. BAUCUS. Mr. President, today I honor and congratulate my friend MG Prendergast.

After 46 years of loyal military service to Montana and our Nation, the top officer of the Montana National Guard will step down from his post August 1, as age prevents Major General Prendergast from serving beyond his 64th birthday.

Some call him general, some call him husband, father, son. I call this outstanding individual, my friend. I have known Gene since the early years in our hometown of Helena, MT, where we both lived and played, studied and worked. In 1958, when Dwight Eisenhouser was President, Major General Prendergast volunteered for his first of many military positions in the Montana Air National Guard while also working a civilian job at a local bank. I worked with him at the Union Bank during the summer months away from school. In 1960, he transferred into the Montana National Guard and received his commission in 1967 as an ordnance officer.

Major General Prendergast worked his way up through the ranks, and held various titles, including automotive platoon leader, instructor at the Montana Military Academy, assistant commandant and chief of staff of the Montana National Guard. He graduated from the Regents College of the State University of New York in 1993.

For his outstanding service and many years of commitment to our Nation, Major General Prendergast has been awarded the Meritorious Service Medal with two oak leaf clusters, Army Commendation Medal, Armed Forces Reserve Medal, and the Army Reserve Components Overseas Training Ribbon, among other medals.

Major General Prendergast is known among his colleagues, his friends, and all Montanans for his commitment to the American Nation. In his own words, ''There is no higher calling than serving your country in uniform. What it's all about is the soldier in uniform.''

Today I honor both the soldier and the man. I have been so fortunate to have this man as my friend over many years. In fact, my good friend shares with me a love for long-distance running, and I have enjoyed running many

miles with the general under Montana's big sky. We run and talk, laugh and share family stories.

As I reflect on the years I have been fortunate to know MG Gene Prendergast, I am reminded of the plaque which hangs in his office that his wife, Kathy, had made for him, the long-distance runner:

''The race is not always to the swift, but those who keep on running.'' Around the world in 22 years—running 25,000 miles—June 1978–August 2000.

For my friend, MG Gene Prendergast, the race has only just begun. You are a soldier's soldier. I salute you for your outstanding service to our State and to this Nation.●

MESSAGES FROM THE HOUSE

At 11:22 a.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 4613. An act making appropriations for the Department of Defense for the fiscal year ending September 30, 2005, and for other purposes.

At 12:03 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 4226. An act to amend title 49, United States Code, to make certain conforming changes to provisions governing the registration of aircraft and the recordation of instruments in order to implement the Convention on International Interests in Mobile Equipment and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment, known as the ''Cape Town Treaty''.

H.R. 4372. An act to amend the Internal Revenue Code of 1986 to provide for the carryforward of $500 of unused benefits in cafeteria plans and flexible spending arrangements for dependent care assistance.

The message also announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 13. Concurrent resolution recognizing the importance of blues music, and for other purposes.

H. Con. Res. 56. Concurrent resolution expressing the sense of the Congress that States should require candidates for driver's licenses to demonstrate an ability to exercise greatly increased caution when driving in the proximity of a potentially visually impaired individual.

H. Con. Res. 449. Concurrent resolution honoring the life and accomplishments of Ray Charles, recognizing his contributions to the Nation, and extending condolences to his family on his death.

ENROLLED BILLS SIGNED

The message further announced that the Speaker has signed the following enrolled bills:

S. 1848. An act to amend the Bend Pine Nursery Land Conveyance Act to direct the Secretary of Agriculture to sell the Bend Pine Nursery Administration Site in the State of Oregon.

S. 2238. An act to amend the National Flood Insurance Act of 1968 to reduce losses to properties for which repetitive flood insurance claim payments have been made.

H.R. 3378. An act to assist in the conservation of marine turtles and the nesting habitats of marine turtles in foreign countries.

H.R. 3504. An act to amend the Indian Self-Determination and Education Assistance Act to redesignate the American Indian Education Foundation as the National Fund for Excellence in American Indian Education.

H.R. 4322. An act to provide for the transfer of the Nebraska Avenue Naval Complex in the District of Columbia to facilitate the establishment of the headquarters for the Department of Homeland Security, to provide for the acquisition by the Department of the Navy of suitable replacement facilities, and for other purposes.

The enrolled bills were signed subsequently by the President pro tempore (Mr. STEVENS).

At 5:07 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 4635. An act to provide an extension of highway, highway safety, motor carrier safety, transit, and other programs funded out of the Highway Trust Fund pending enactment of a law reauthorizing the Transportation Equity Act for the 21st Century.

ENROLLED BILL SIGNED

At 6:03 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

H.R. 4589. An act to reauthorize the Temporary Assistance for Needy Families block grant program through September 30, 2004, and for other purposes.

The enrolled bill was signed subsequently by the President pro tempore (Mr. STEVENS).

MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 4226. An act to amend title 49, United States Code, to make certain conforming changes to provisions governing the registration of aircraft and the recordation of instruments in order to implement the Convention on International Interests in Mobile Equipment and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment, known as the ''Cape Town Treaty''; to the Committee on Commerce, Science, and Transportation.

H.R. 4372. An act to amend the Internal Revenue Code of 1986 to provide for the carryforward of $500 of unused benefits in cafeteria plans and flexible spending arrangements for dependent care assistance; to the Committee on Finance.

The following concurrent resolutions were read, and referred as indicated:

H. Con. Res. 13. Concurrent resolution recognizing the importance of blues music, and for other purposes; to the Committee on the Judiciary.

H. Con. Res. 56. Concurrent resolution expressing the sense of the Congress that States should require candidates for driver's licenses to demonstrate an ability to exercise greatly increased caution when driving in the proximity of a potentially visually impaired individual; to the Committee on Commerce, Science, and Transportation.

MEASURES PLACED ON THE CALENDAR

The following bill was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 4613. An act making appropriations for the Department of Defense for the fiscal year ending September 30, 2005, and for other purposes.

The following concurrent resolution was read, and placed on the calendar:

H. Con. Res. 449. Concurrent resolution honoring the life and accomplishments of Ray Charles, recognizing his contributions to the Nation, and extending condolences to his family on his death.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on today, June 23, 2004, she had presented to the President of the United States the following enrolled bills:

S. 1848. An act to amend the Bend Pine Nursery Land Conveyance Act to direct the Secretary of Agriculture to sell the Bend Pine Nursery Administration Site in the State of Oregon.

S. 2238. An act to amend the National Flood Insurance Act of 1968 to reduce losses to properties for which repetitive flood insurance claim payments have been made.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–8092. A communication from the Administrator, Small Business Administration, transmitting, pursuant to law, the Administration's Report to Congress on Minority Small Business and Capital Ownership Development for fiscal year 2003; to the Committee on Small Business and Entrepreneurship.

EC–8093. A communication from the Chairman, Federal Election Commission, transmitting, pursuant to law, the Commission's 2003 Annual Report; to the Committee on Rules and Administration.

EC–8094. A communication from the Chairman, Election Assistance Commission, transmitting, pursuant to law, the Commission's Fiscal Year 2003 Annual Report; to the Committee on Rules and Administration.

EC–8095. A communication from the Vice Chair, Federal Election Commission, transmitting, pursuant to law, the Commission's Fiscal Year 2005 Budget Request; to the Committee on Rules and Administration.

EC–8096. A communication from the Director, Office of Regulation Policy and Management, Veterans Benefits Administration, transmitting, pursuant to law, the report of a rule entitled ''Change of Effective Date of Rule Adding a Disease Associate With Exposure to Certain Herbicide Agents: Type 2 Diabetes'' (RIN2900–AL93) received on June 22, 2004; to the Committee on Veterans' Affairs.

EC–8097. A communication from the Director, Office of Regulation Policy and Management, Veterans Benefits Administration, transmitting, pursuant to law, the report of a rule entitled ''Sensori-Neural Aids'' (RIN2900–AL60) received on June 22, 2004; to the Committee on Veterans' Affairs.

EC–8098. A communication from the Director, Office of Regulation Policy and Management, Veterans Benefits Administration, transmitting, pursuant to law, the report of a rule entitled ''VA Homeless Providers Grant and Per Diem Program; Religious Organizations'' (RIN2900–AL63) received on June 22, 2004; to the Committee on Veterans' Affairs.

EC–8099. A communication from the Director, Office of Regulation Policy and Management, Board of Veterans' Appeals, transmitting, pursuant to law, the report of a rule entitled ''Board of Veterans' Appeals: Rules of Practice—Motions for Revision of Decisions on Grounds of Clear and Unmistakable Error: Advancement on the Docket'' (RIN2900–AJ85) received on June 22, 2004; to the Committee on Veterans' Affairs.

EC–8100. A communication from the Secretary of Veterans Affairs, transmitting, a draft of proposed legislation entitled the ''Veterans Programs Improvement Act of 2004''; to the Committee on Veterans' Affairs.

EC–8101. A communication from the President, John F. Kennedy Center for the Performing Arts, transmitting, pursuant to law, a report relative to the Center's competitive sourcing competitions in fiscal year 2003; to the Committee on Rules and Administration.

EC–8102. A communication from the Secretary of Veterans' Affairs, transmitting, pursuant to law, the Department of Veterans' Affairs' Report on its competitive sourcing efforts for Fiscal Year 2003; to the Committee on Veterans' Affairs.

EC–8103. A communication from the Secretary of Veterans' Affairs, transmitting, pursuant to law, the Capital Asset Realignment for Enhanced Services (CARES) Decision for the Department of Veterans' Affairs; to the Committee on Veterans' Affairs.

EC–8104. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: NARCO Avionics Inc. AT150 Transponders; Doc. No. 2002–NE–32'' (RIN2120–AA64) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8105. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Eagle Aircraft Malaysta Sdn. Bhd Model Eagle 150B Airplanes; Doc. No. 2004–CE–14'' (RIN2120–AA64) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8106. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Defense and Space Group Model 234 Helicopters Doc. No. 2004–SW–09'' (RIN2120–AA64) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8107. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Agusta S.p.A Model A109E Helicopters Doc. No. 2003–SW–32'' (RIN2120–AA64) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8108. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 747–400 and 400F Airplanes Equipped With Rolls Royce Engines Doc. No. 2003–NM–202'' (RIN2120–AA64) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8109. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Raytheon Model BAe.125 Series (Including C–29A and U–125 and 800 B Airplanes and Model Hawker 800 (Including U–125 A Variant), and 800 XP Airplanes Doc. No. 2003–NM–216'' (RIN2120–AA64) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8110. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: BAE Systems (Operations) Limited Model BAe 146 Airplanes Doc. No. 2003–NM–17'' (RIN2120–AA64) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8111. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Saab Model SAAB SF340A and SAAB 340B Series Airplanes Doc. No. 2003–NM–18'' (RIN2120–AA64) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8112. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Alexander Schleicher GmbH & Co. Segelflugzeubau Model ASH 25 M Sailplanes Doc. No. 2003–CE–64'' (RIN2120–AA64) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8113. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: GARMIN International Inc. GTX Model S Transponders and GTX 330D Diversity Mode S Transponders Doc. No. 2003–CE–39'' (RIN2120–AA64) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8114. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 737–600, 700, 700C, 800, and 900 Airplanes Equipped With Certain Honeywell Start Converter Units Doc. No. 2001–NM–291'' (RIN2120–AA64) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8115. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: McDonnell Douglas Model DC–10–30 Airplanes Doc. No. 2002–NM–237'' (RIN2120–AA64) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8116. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ Airplanes Doc. No. 2002–NM–343'' (RIN2120–AA64) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8117. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Oshkosh, NE Doc. No. 04–ACE–27'' (RIN2120–AA66) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8118. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Mosby, MO Doc. No. 04–ACE–33'' (RIN2120–AA64) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8119. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 777–200 Airplanes Doc. No. 2003–NM–50'' (RIN2120–AA64) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8120. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: McDonnell Douglas Model MD–11 and 11F Airplanes Doc. No. 2003–NM–75'' (RIN2120–AA64) received on June 22 , 2004; to the Committee on Commerce, Science, and Transportation .

EC–8121. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Dornier Model 328–100 Airplanes Doc. No. 2003–NM–56'' (RIN2120–AA64) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8122. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Eurocopter France Model EC 130 B4 and AS 350 B3 Helicopters Doc. No. 2003–SW–29'' (RIN2120–AA64) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8123. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Bombardier Model CL–600 2B19 (Regional Jet Series 100 and 400) Airplanes Doc. No. 2001–NM–321'' (RIN2120–AA64) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8124. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Lycoming Engines (formerly Textron) Direct-Drive Reciprocating Engines Doc. No. 89–ANE–10'' (RIN2120–AA64) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8125. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Bombardier Model CL–215–b11 (CL215T Variant) Airplanes Doc. No. 2003–NM–199''

(RIN2120–AA64) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8126. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Glasfugel—Ing. E. Hanie Model GLASFUGEL Kestrel Sailplanes Doc. No. 2003–CE–60'' (RIN2120–AA64) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8127. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Bombardier Model CL–600–1–A11 (CL–600) , CL–600–2–A12 (CL–601) and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604 Airplanes Doc. No. 2003–NM–175'' (RIN2120–AA64) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

PETITIONS AND MEMORIALS

POM–452. A resolution adopted by the Senate of the Legislature of the State of Louisiana relative to the establishment of the Coastal Forest Reserve Program; to the Committee on Agriculture, Nutrition, and Forestry.

SENATE CONCURRENT RESOLUTION NO. 75

Whereas, Louisiana's coastal land loss problem is well known within the state and is gaining recognition across the country as one of the nation's most pressing conservation issues; and

Whereas, of recent concern in the state is the conservation and management of privately-owned coastal forests due to their importance in stabilizing soils and providing structural barriers against coastal erosion, in addition to their particular importance to neotropical migratory song birds and colonial wading birds; and

Whereas, the United States Congress has responded to the need to conserve and restore wildlife habitat throughout the nation by authorizing and funding numerous conservation incentive programs such as the Conservation and Wetlands Reserve Programs (CRP/WRP); and

Whereas, Conservation and Wetlands Reserve Programs are authorized to apply to agricultural lands and therefore are not available to provide incentives to coastal forest owners to preserve their forests or manage them sustainably; and

Whereas, considering the dramatic loss of coastal forests to saltwater intrusion and the importance of coastal forests, and individual trees, to the structural integrity of Louisiana's coastal wetlands, now popularized as ''America's WETLAND,'' it is ironic that an incentive program is not available to secure the conservation of this critical resource: Therefore, be it

Resolved, That the Legislature of Louisiana memorializes the Congress of the United States to authorize and fund the establishment of a Coastal Forest Reserve Program to provide incentives to coastal forest owners to preserve and sustainably manage their coastal forests as part of the state and national initiative to restore the Mississippi River coastal delta and chenier plain of southwest Louisiana; be it further

Resolved, That the Legislature of Louisiana urges and requests the United States Department of Agriculture Forest Service, the Louisiana Department of Agriculture and Forestry, and the Louisiana State University School of Renewable Natural Resources, with assistance from the University of Louisiana at Lafayette and other Louisiana universities, to provide an inventory of coastal forests and assess their functional values for the purposes of establishing eligibility and priority ranking for enrollment in a Coastal Forest Reserve Program; be it further

Resolved, That a copy of this Resolution shall be transmitted to the secretary of the United States Senate and the clerk of the United States House of Representatives, and to each member of the Louisiana delegation to the United States Congress; and be it further

Resolved, That a copy of this Resolution shall be transmitted to the chief of the United States Department of Agriculture Forest Service, the commissioner of the Louisiana Department of Agriculture and Forestry, the director of the Louisiana State University School of Renewable Natural Resources, and the president of the University of Louisiana at Lafayette.

POM–453. A resolution adopted by the Senate of the Legislature of the State of Hawaii relative to the Marine Corps Training Area in Waikane Valley, Hawaii; to the Committee on Armed Services.

Whereas, Waikane Valley contains undeveloped land in the ahupuaa of Waikane on Oahu's windward side; and

Whereas, 33 years ago, the United States Marine Corps obtained 187 acres in Waikane Valley, commonly referred to as the ''Waikane Training Area,'' for military jungle and live ordnance training; and

Whereas, the United States Marine Corps has announced its intention to close the Waikane Training Area, but as recently as last year, the United States Marine Corps has sought to use Waikane Valley for more military jungle training; and

Whereas, ironically, Waikane Valley was abandoned as a training site by the United States Marine Corps because of safety concerns over the use of high explosive antitank and bazooka rounds used in the past and the insufficient data to determine the exact number of ammunition rounds fired in the valley; and

Whereas, the United States Marine Corps originally obtained the right to use the Waikane Training Area by a lease from the McCandless Estate and Waiahole Water Company in 1953 and subsequently by a lease from the same parties and the heirs of John Kamaka; and

Whereas, the Kamaka heirs acquired title to the Waikane Training Area by quitclaim deed in June of 1972 and terminated the lease with the United States Marine Corps in 1976; and

Whereas, between 1976 and 1993, the United States Marine Corps conducted several investigations and ordnance removal efforts on the property and concluded that the Waikane Training Area could never be certified as being clear of ordnance; and

Whereas, the United States Navy and Marine Corps acquired title to the Waikane Training Area in 1993 by condemnation as a means to address the problem of not being able to fulfill their lease obligations to return the property to the Kamaka heirs in an ordnance-free and safe condition; and

Whereas, land in Hawaii, and particularly agricultural and conservation land, is Hawaii's most precious and limited resource; and

Whereas, Waikane Valley has served historically as important agricultural area for the island of Oahu and contains precious archaeological and historic sites; and

Whereas, regardless of the 1993 condemnation, members of the Waikane community believe that the United States Marine Corps should live up to their commitment of cleaning up the land, and they have expressed their desire to have the Waikane Training Area restored to a condition that will permit them to return to the aina and engage in farming and other agricultural activities that would be appropriate based on the condition of the remediated property; and

Whereas, the federal government and military have previously demonstrated their will and capacity to honor their obligations to remediate and restore other equally or more severely contaminated installations upon closure under the Formerly Used Defense Site Program, Defense Environmental Restoration Program, Installation Restoration Program, other Department of Defense initiatives and programs, and with special appropriations from Congress; and

Whereas, the current official position of United States Department of Defense is that no ordnance-contaminated site can ever be certified as being clear of unexploded ordnance; and

Whereas, based on the inability to certify the Waikane Training Area as being clear of unexploded ordnance, the United States Navy and Marine Corps are considering permanent closure of the property to the general public by erecting a security fence around the area; and

Whereas, the permanent closure of the Waikane Training Area would be a devastating loss of precious agricultural, historical, cultural, and natural resources to Hawaii; and

Whereas, with sufficient funding from existing restoration programs or special appropriations from Congress, or both, the United States Navy and Marine Corps have the means to clean-up the Waikane Training Area to a condition that is reasonably safe for certain restricted uses, provided long-term monitoring and guidelines are established: Now, therefore, be it

Resolved by the Senate of the Twenty-Second Legislature of the State of Hawaii, Regular Session of 2004, That the federal government is requested to conduct a thorough evaluation of the condition of the Waikane Training Area, particularly with regard to environmental and ordnance-related hazards that exist on the property; and be it further

Resolved, That the federal government is requested to plan for and conduct as thorough a clean-up of the Waikane Training Area as is technologically possible, including the remediation or removal of all environmental hazards and contamination and removal of all practice and live ordnance; and be it further

Resolved, That the federal government is requested to conduct a post-clean-up environmental assessment of the Waikane Training Area evaluating the potential risks to human health and safety, for the purpose of determining the types of uses and activities that could appropriately be conducted on the property with minimal risk to potential users and the community at large; and be it further

Resolved, That the federal government is requested to return the Waikane Training Area to the State of Hawaii upon completion of the clean-up; and be it further

Resolved, that the federal government is requested to appropriate sufficient funds to plan for, implement, and complete the rehabilitation and transfer of the Waikane Training Area; and be it further

Resolved, That the members of Hawaii's congressional delegation are requested to assist in seeking and obtaining the relief sought above; and be it further

Resolved, That certified copies of this Resolution be transmitted to President of the United States, President of the United States Senate, Speaker of the United States House of Representatives, members of Hawaii's congressional delegation, the Commandant of the Marine Corps, and the Secretary of the Navy.

POM–454. A joint resolution adopted by the General Assembly of the State of Tennessee relative to United States government uniforms and equipment; to the Committee on Armed Services.

SENATE JOINT RESOLUTION NO. 64

Whereas, it is with great pride and honor that the hardworking employees of American factories craft the uniforms and equipment that clothe and protect the members of the United States government; and

Whereas, to take that privilege away from those Americans who ceaselessly toil to fulfill their patriotic duty to the men and women who serve our fine country is a grievous insult to the American people; and

Whereas, on October 28, 2002, Fechheimer Brothers Manufacturing Company in Martin learned that one of its largest accounts, the United States Postal Service, had certified a new supplier of postal uniforms, San Francisco Knitting Mills—one that cuts costs by manufacturing the product outside the United States; and

Whereas, according to a memo from Fechheimer President and CEO, Brad Kinstler, San Francisco Knitting Mills is ''the first manufacturer to venture outside of the U.S. to make products for the postal market,'' an action which may result in setting a dangerous precedent; and

Whereas, the Fechheimer-Martin plant, formerly Martin Manufacturing Company, is one of four plants owned by the Fechheimer Corporation of Cincinnati; and

Whereas, three of the plants: Martin, Tennessee; Jefferson, Pennsylvania; and Grantsville, Maryland; manufacture uniform shirts. The corporation's plant in Hodgenville, Kentucky manufactures uniform trousers; and

Whereas, twenty percent of the Fechheimer Brothers Manufacturing Company's annual production consists of the postal service's purchases; the loss of the contract with the postal service could result in massive layoffs at the plant, possibly up to twenty percent of the company's 200 workers, which would then put a crimp in the local economy; and

Whereas, plant manager Marc Lemacks describes Fechheimer Brothers Manufacturing Company as the ''Cadillac of the industry,'' a corporation that consistently provides its clients and customers with quality products and service; and

Whereas, Mr. Lemacks is aware of no complaints from the United States Postal Service in regards to the uniforms produced by his company; instead, he fears the postal service's decision to change suppliers is based on an attempt to secure a lower price with an offshore company; and

Whereas, not only will transferring production of postal service uniforms to another country rob the American people of their jobs and livelihoods, but it will result in a decrease in revenue to the American government through the loss of taxes paid by American workers; and

Whereas, it is crucial that the production of uniforms and equipment for United States government workers remain in American factories, for the producing and wearing of American-made products strengthens the morale of both government and civil service workers, boosts the country's economy, and manifests the pride of the American government toward its citizens: Now, therefore, be it

Resolved by the senate of the one hundred third General Assembly of the State of Tennessee, the House of Representatives concurring, That we respectfully urge the Congress of the United States to resolve this important issue and require that government uniforms and equipment be manufactured in the United States, thus saving the jobs of myriad Americans and strengthening the national economy; be it further

Resolved, That appropriate copies of this resolution be transmitted forthwith to the President of the United States, the Speaker and the Clerk of the United States House of Representatives, the President and the Secretary of the United States Senate, and to each member of the Tennessee Congressional Delegation.

POM–455. A resolution adopted by the Council of the city of Parma of the State of Ohio relative to funding for the Department of Housing and Urban Development's 2005 Budget; to the Committee on Banking, Housing, and Urban Affairs.

POM–456. A resolution adopted by the Senate of the General Assembly of the State of Iowa relative to funds for the National Park Service for Loess Hills in Iowa; to the Committee on Energy and Natural Resources.

Whereas, the Loess Hills in Iowa are a unique natural resource that are recognized worldwide for their unique landscape and geological value; and

Whereas, the Loess Hills are also recognized for their unique cultural and archaeological resources; and

Whereas, the National Park Service and a team of Iowa specialists, completed a Special Resource Study and Environmental Assessment of the Loess Hills in 2002; and

Whereas, the Special Resources Study provided national recognition that the Loess Hills in western Iowa with their extensive prairie ecosystems are of ''exceptional value''; and

Whereas, the Special Resource Study catalogued a series of threats to the integrity of the Loess Hills including erosion, displacement of prairie, unplanned growth, and degradation of archaeological resources; and

Whereas, a comprehensive plan would complement and assist in synthesizing the efforts of a broad range of state, private, and federal programs; and

Whereas, the need for assistance is most acute in the twelve special landscape areas that have been identified in the Loess Hills; and

Whereas, federal assistance is needed to aid state and local governments and private landowners in the Loess Hills in their efforts to preserve these last native prairies of Iowa and this scenic landform; and

Whereas, the State of Iowa and the nation are celebrating the visit of the Lewis and Clark Corps of Discovery to this treasured Iowa landform 200 years ago. Now therefore, be it

Resolved by the senate, That the Iowa Senate urges Congress to immediately act to authorize and appropriate funding to the National Park Service so that the National Park Service can participate with the Loess Hills Development and Conservation Authority and with representatives of the Iowa Department of Agriculture and Land Stewardship, the Iowa Department of Natural Resources, the Iowa Department of Transportation, educational institutions, nongovernmental organizations, and private landowners in the development of a comprehensive plan to ensure the long-term protection of the Loess Hills in Iowa; and be it further

Resolved, That the Secretary of the Senate send copies of this Resolution to the President of the United States; the President of the United States Senate; the Speaker of the United States House of Representatives; and to members of Iowa's congressional delegation.

POM–457. A resolution adopted by the House of Representatives of the Legislature of the State of Louisiana relative to the proposed federal funding cuts to maintenance and operation of locks and dams along the Ouachita and Black River navigational system; to the Committee on Environment and Public Works.

HOUSE RESOLUTION NO. 39

Whereas, four locks and dams along the Ouachita and Black River navigational system maintain a nine-foot channel for approximately three hundred thirty-six miles in Louisiana and Arkansas, which is a remarkably efficient use of resources; and

Whereas, the Congress of the United States is considering a funding cut of eight million dollars per year, which would eliminate funding for the maintenance and operation of this system of locks and dams; and

Whereas, this federal funding cut has been proposed based solely on ton-miles analysis and has not been evaluated through public hearings; and

Whereas, numerous industries are dependent on the maintenance of these locks and dams, including a number of cities and industries which process the water for drinking purposes and industrial purposes; and

Whereas, such cities and industries would be dramatically affected by the lowering of the water levels in the Ouachita and Black River navigational system; and

Whereas, additionally, the Sparta Acquifier located in north Louisiana and south Arkansas is currently in crises and would be further harmed by a reduction in recharge from this river water; and

Whereas, in contrast to other federal procedures when deactivating facilities, no economic impact study has be conducted by the federal government prior to proposing these funding cuts, and it is unclear whether the United States Army Corps of Engineers can legally close these locks, thereby dramatically reducing the navigability of the Ouachita and Black Rivers: Therefore, be it

Resolved, That the House of Representatives of the Louisiana Legislature does hereby memorialize the United States Congress to oppose the proposed funding cuts to locks and dams along the Ouachita and Black River navigational system until such time as a proper economic impact study can be conducted by appropriate federal and state authorities and until a determination can be made regarding the legality of closing such locks; be it further

Resolved, That a copy of this Resolution be transmitted to the presiding officers of the Senate and House of Representatives of the Congress of the United States of America and to each member of the Louisiana congressional delegation.

POM–458. A resolution adopted by the Senate of the Legislature of the State of Louisiana relative to the proposed federal funding cuts to maintenance and operation of locks and dams along the Ouachita and Black River navigational system; to the Committee on Environment and Public Works.

SENATE RESOLUTION NO. 65

Whereas, four locks and dams along the Ouachita and Black River navigational system maintain a nine-foot channel for approximately three hundred thirty-six miles in Louisiana and Arkansas, which is a remarkably efficient use of resources; and

Whereas, the Congress of the United States is considering a funding cut of eight million dollars per year, which would eliminate funding for the maintenance and operation of this system of locks and dams; and

Whereas, this federal funding cut has been proposed based solely on ton-miles analysis and has not been evaluated through public hearings; and

Whereas, numerous industries are dependent on the maintenance of these locks and

dams, including a number of cities and industries which process the water for drinking purposes and industrial purposes; and

Whereas, such cities and industries would be dramatically affected by the lowering of the water levels in the Ouachita and Black River navigational system; and

Whereas, additionally, the Sparta Acquifier located in north Louisiana and south Arkansas is currently in crises and would be further harmed by a reduction in recharge from this river water; and

Whereas, in contrast to other federal procedures when deactivating facilities, no economic impact study has been conducted by the federal government prior to proposing these funding cuts, and it is unclear whether the United States Army Corps of Engineers can legally close these locks, thereby dramatically reducing the navigability of the Ouachiata and Black Rivers: Therefore, be it

Resolved, That the Senate of the Legislature of Louisiana does hereby memorialize the United States Congress to oppose the proposed funding cuts to locks and dams along the Ouachita and Black River navigational system until such time as a proper economic impact study can be conducted by appropriate federal and state authorities and until a determination can be made regarding the legality of closing such locks; be it further

Resolved, That a copy of this Resolution be transmitted to the presiding officers of the Senate and House of Representatives of the Congress of the United Sates of America and to each member of the Louisiana congressional delegation.

POM–459. A concurrent resolution adopted by the Senate of the General Assembly of the Commonwealth of Pennsylvania relative to the Clean Water State Resolving Program; to the Committee on Environment and Public Works.

SENATE RESOLUTION NO. 98

Whereas, the Congress of the United States established the Clean Water State Revolving Fund to lend money to communities to help pay for urgently needed wastewater infrastructure projects; and

Whereas, the Clean Water State Revolving Fund has been one of the most effective and practical ways to address the United States' rapidly deteriorating water infrastructure system; and

Whereas, in 1994, when authorization for the Clean Water State Revolving Fund expired, the Congress continued to approve money to capitalize the Clean Water State Revolving Fund without authorization; and

Whereas, the United States Environmental Protection Agency's 200 Clean Watersheds Needs Survey Report to Congress documented five-year capital investment need for publicly owned wastewater treatment facilities that are eligible for funding under the Environmental Protection Agency's Clean Water State Revolving Loan Fund Program and found national needs of more than $181 billion; and

Whereas, that same study found the total needs across Pennsylvania to be in excess of $8 billion, including $1 billion for treatment facilities, $1.6 billion for new collector and interceptor sewers and more than $4 billion for the combined sewer overflow problem; and

Whereas, a 1999 Environmental Protection Agency Needs Gaps Study found that sanitary sewer overflow needs in the 1996 study were grossly underestimated, bringing the total national wastewater infrastructure needs to more than $200 billion; and

Whereas, independent studies indicate that when 20-year replacement costs are added, the total wastewater infrastructure needs will exceed $300 billion; and

Whereas, the performance of the Clean Water State Revolving Fund has leveraged more than $21.2 billion in capitalization grants into more than $38.7 billion in water infrastructure projects; and

Whereas, up to 55,000 new jobs are created for every $1 billion expended on water infrastructure; and

Whereas, the gap between funding and needs continues to grow despite the significant amounts contributed to the Clean Water State Revolving Fund in capitalization grants; and

Whereas, while the investor-owned utilities have had access to the Drinking Water State Revolving Fund (DW–SRF) since its inception, they have not had access to the Clean Water State Revolving Fund; and

Whereas, the benefits of investor-owned utility access would flow back to their customers, who are also taxpayers contributing to the State revolving funds; and

Whereas, investor-owned utilities could use the Clean Water State Revolving Fund to assist states with failing systems, compliance problems or underserved areas, while creating jobs and paying more taxes; Therefore be it

*Resolved (the house of representatives concurring),*That the General Assembly of the Commonwealth of Pennsylvania acknowledge the key role of the Clean Water State Revolving Fund Program in enhancing public health and safety, protecting the environment and maintaining a strong economic base by increasing labor productivity, creating jobs, rehabilitating old neighborhoods and ensuring the availability of recreational use of our waterways and shorelines; and be it further

Resolved, That the General Assembly of the Commonwealth of Pennsylvania recognize the Clean Water State Revolving Fund Program as the most pragmatic and effective program that provides states vital financial resources to address their wastewater infrastructure needs; and be it further

Resolved, That the General Assembly of the Commonwealth of Pennsylvania encourage all communities in the Commonwealth of Pennsylvania to participate in this important program; and be it further

Resolved, That the General Assembly of the Commonwealth of Pennsylvania urge the Congress of the United States to expand eligibility to the Clean Water State Revolving Fund so the customers of investor-owned utilities can share in the benefits of the Clean Water State Revolving Fund; and be it further

Resolved, That the General Assembly of the Commonwealth of Pennsylvania urge the Congress of the United States to increase the annual Federal capitalization grant to the Clean Water State Revolving Fund to better address the tremendous needs across the United States and the Commonwealth of Pennsylvania; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States, the presiding officers of each house of Congress and to each member of Congress from Pennsylvania.

POM–460. A resolution adopted by the House of Representatives of the Legislature of the State of Hawaii relative to repealing the changes made to the Clean Air Act in 2002; to the Committee on Environment and Public Works.

HOUSE RESOLUTION NO. 191

Whereas, according to the Clean Air Act, toxic substances such as mercury must be controlled by the ''maximum achievable control technology'' standard; and

Whereas, two years ago, the Environmental Protection Agency estimated that under a maximum achievable control technology standard, power plants using existing technologies could reduce ninety per cent of mercury emissions from power plants, bringing mercury emissions down from forty-eight tons to roughly five tons per year by 2008; and

Whereas, under changes made by the Bush administration in 2002, there is allowed a significant delay for cleaning up power plant mercury emissions and a standard that is far weaker than the maximum achievable control technology standard and is not protective of public health; and

Whereas, in effect, these changes would treat power plants' mercury emissions as non-hazardous air pollution and allow power plants to emit six to seven times more mercury into the nation's air, and for a decade longer, than the Clean Air Act requires; and

Whereas, additionally, changes made by the Bush administration allow some plants to avoid reducing mercury emissions altogether by purchasing pollution credits from other cleaner plants, which increases the chances that toxic ''hotspots'' could develop in communities where deposition is more prevalent: Now, therefore, be it

Resolved by the House of Representatives of the Twenty-second Legislature of the State of Hawaii, Regular Session of 2004, That the United States Congress is requested to repeal the changes made by the Bush administration to the Clean Air in 2002; and be it further

Resolved, That certified copies of this Resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of Hawaii's congressional delegation.

POM–461. A resolution adopted by the House of Representatives of the Legislature of the State of Michigan relative to a wagering tax in gross receipts at Native American Casinos; to the Committee on Finance.

HOUSE RESOLUTION NO. 257

Whereas, fairness in taxation is a key to effective public policy and to fostering the faith and trust that are vital to the strength of our system of self-government. Inconsistency in the application of laws, including those assessing taxes, is frustrating to individual citizens, business enterprises of all types and sizes, and local and state governments; and

Whereas, an area of business activity where laws and taxes are applied inconsistently is gaming. The sovereignty of Native American tribes has resulted in a host of different arrangements, even among tribal facilities. There is even greater disparity between the operations of non-Native American gaming facilities and Native American casinos; and

Whereas, while the states, including Michigan, have a very limited capacity to rectify the differences in the treatment of non-Native American and Native American gaming operations, including taxation, the federal government could bring a needed measure of fairness to this situation: Now, therefore, be it

Resolved by the house of representatives, That we memorialize the Congress of the United States to implement a 36 percent federal wagering tax on gross receipts at Native American casinos and to redistribute the revenues to the states of origin; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

POM–462. A concurrent resolution adopted by the House of Representatives of the Legislature of the State of Hawaii relative to a center for the advancement of global health, welfare, education, and peace by and for children, youth, and families; to the Committee on Foreign Relations.

HOUSE CONCURRENT RESOLUTION NO. 153

Whereas, the Millennium Young People's Congress held in Hawaii in October 1999, demonstrated the value of a collective global vision by and for the children of the world as well as the need for a forum for international discussion of issues facing all children and youth; and

Whereas, the World Youth Congress and representatives from the Kingdom of Morocco met in Hawaii in March 2003, demonstrating the collaboration that a Center for the Advancement of Global Health, Welfare, Education, and Peace By and For Children, Youth, and Families can promote; and

Whereas, world peace is a major collaborative goal, and youth are key to attaining world peace, sustainability, and productivity for future generations; and

Whereas, the health, welfare, and education of children and families are part of the basic foundation of values shared globally that should be provided for all children; and

Whereas, the populations of countries in Asia and the Pacific Rim are the largest and fastest-growing segments of the world's population, with young people representing the largest percentage of those populations; and

Whereas, Hawaii's location at the center of the Pacific Rim between Asia and the Americans, its diverse culture, and its many shared languages provide an excellent strategic forum for shared languages provide an excellent strategic forum for meetings and exchanges, as demonstrated by the Millennium Young People's Congress, to:

(1) Discuss issues and solutions for health, welfare, peace, and the rights of children as a basic foundation for all children and youth; and

(2) Research pertinent issues and alternatives concerning children and youth and propose viable models for societal application and promotion of international peace and conflict resolution; Now, therefore, be it

Resolved by the House of Representatives of the Twenty-second Legislature of the State of Hawaii, Regular Session of 2004, the Senate concurring, That the United Nations (UN) is respectfully requested to consider establishing in Hawaii a Center for the Advancement of Global Health, Welfare, Education, and Peace By and For Children, Youth, and Families (Center); and be it further

Resolved, That the President of the United States and members of the United States Congress are urged to support the establishment of such a Center; and be it further

Resolved, That the Matsunaga Peace Institute, the United Nations Association in Hawaii, the House Committee on International Affairs, and the Keiki Caucus of the Hawaii State Legislature are requested to convene an exploratory task force to develop such a proposal for consideration by the UN; and be it further

Resolved, That assistance be sought from foundations and other nongovernmental organizations who might assist in funding the Center; and be it further

Resolved, That the World Youth Congress, which will be holding its third meeting in Glasgow, Scotland, in August 2005, is urged to establish a Center dedicated to UN Secretary General Kofi Annan; and be it further

Resolved, That certified copies of this Concurrent Resolution be transmitted to the Secretary General of the UN, Focal Point on Youth of the UN Office of the Secretary General, Senior Policy Advisor for the UN Children's Fund, President of the United States, President of the United States Senate, Speaker of the United States House of Representatives, members of Hawaii's congressional delegation, United States Representative to the UN, President of the University of Hawaii, President of the East-West Center, Superintendent of Education, Executive Director of the Hawaii Association of Independent Schools, President of the United Nations Association in Hawaii, Director of the Matsunaga Peace Institute, Program Director of the American Friends Service Committee—Hawaii, President of the Hawaii State Senate, and the Speaker of the Hawaii State House of Representatives.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. JOHNSON:

S. 2561. A bill to amend title 38, United States Code, to provide for certain servicemembers to become eligible for educational assistance under the Montgomery GI Bill; to the Committee on Veterans' Affairs.

By Mr. BAUCUS:

S. 2562. A bill to amend title XVIII of the Social Security Act to provide incentives for the furnishing of quality care under Medicare Advantage plans and by end stage renal disease providers and facilities, and for other purposes; to the Committee on Finance.

By Mr. KOHL (for himself and Mr. HATCH):

S. 2563. A bill to require imported explosives to be marked in the same manner as domestically manufactured explosives; to the Committee on the Judiciary.

By Mrs. HUTCHISON:

S. 2564. A bill to amend the Lower Rio Grande Valley Water Resources Conservation and Improvement Act of 2000 to authorize additional projects and activities under that Act, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. CRAPO (for himself, Mr. FITZGERALD, Mr. LUGAR, Mr. SMITH, Mr. WYDEN, Mr. CRAIG, and Mr. ROBERTS):

S. 2565. A bill to amend the Agriculture Adjustment Act to convert the dairy forward pricing program into a permanent program of the Department of Agriculture; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. BINGAMAN (for himself, Mr. CORZINE, Mr. LAUTENBERG, Ms. STABENOW, Mrs. CLINTON, Mr. JOHNSON, Ms. MIKULSKI, Mr. DURBIN, and Mr. DAYTON):

S. 2566. A bill to amend title II of the Social Security Act to phase out the 24-month waiting period for disabled individuals to become eligible for medicare benefits, to eliminate the waiting period for individuals with life-threatening conditions, and for other purposes; to the Committee on Finance.

By Mrs. FEINSTEIN:

S. 2567. A bill to adjust the boundary of Redwood National Park in the State of California; to the Committee on Energy and Natural Resources.

By Mr. BIDEN:

S. 2568. A bill to require the Secretary of the Treasury to mint coins in commemoration of the tercentenary of the birth of Benjamin Franklin, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Ms. SNOWE:

S. 2569. A bill to amend section 227 of the Communications Act of 1934 to clarify the prohibition on junk fax transmissions; to the Committee on Commerce, Science, and Transportation.

By Mr. SPECTER (for himself and Mr. HARKIN):

S. 2570. A bill entitled ''The Health Care Assurance Act of 2004''; to the Committee on Finance.

By Mr. ENZI:

S. 2571. A bill to clarify the loan guarantee authority under title VI of the Native American Housing Assistance and Self-Determination Act of 1996; to the Committee on Indian Affairs with instructions that if the Committee reports, the bill be referred pursuant to the order of May 27, 1988, to the Committee on Banking, Housing, and Urban Affairs for a period not to exceed 60 days.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. CAMPBELL (for himself, Mr. JOHNSON, Mr. BUNNING, Mr. CHAMBLISS, Mr. GRAHAM of South Carolina, Mr. BURNS, and Mrs. LINCOLN):

S. Res. 389. A resolution expressing the sense of the Senate with respect to prostate cancer information; to the Committee on Health, Education, Labor, and Pensions.

By Ms. MURKOWSKI (for herself and Mr. DASCHLE):

S. Res. 390. A resolution designating September 9, 2004, as ''National Fetal Alcohol Spectrum Disorders Day''; considered and agreed to.

ADDITIONAL COSPONSORS

S. 1129

At the request of Mrs. FEINSTEIN, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 1129, a bill to provide for the protection of unaccompanied alien children, and for other purposes.

S. 1246

At the request of Mr. ROBERTS, the name of the Senator from Louisiana (Mr. BREAUX) was added as a cosponsor of S. 1246, a bill to amend the Internal Revenue Code of 1986 to provide for collegiate housing and infrastructure grants.

S. 1890

At the request of Mr. ENZI, the name of the Senator from Pennsylvania (Mr. SANTORUM) was added as a cosponsor of S. 1890, a bill to require the mandatory expensing of stock options granted to executive officers, and for other purposes.

S. 1900

At the request of Mr. LUGAR, the name of the Senator from Florida (Mr. NELSON) was added as a cosponsor of S. 1900, a bill to amend the African Growth and Opportunity Act to expand certain trade benefits to eligible sub-Saharan African countries, and for other purposes.

S. 1945

At the request of Mr. MCCAIN, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S . 1945, a bill to amend the Public Health Service Act and the Employee Retirement Income Security

Act of 1974 to protect consumers in managed care plans and other health coverage.

S. 2141

At the request of Mr. LUGAR, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. 2141, a bill to amend the Farm Security and Rural Investment Act of 2002 to enhance the ability to produce fruits and vegetables on soybean base acres.

S. 2302

At the request of Mr. CONRAD, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 2302, a bill to improve access to physicians in medically underserved areas.

S. 2434

At the request of Mr. HATCH, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 2434, a bill to establish the Commission to Study the Potential Creation of a National Museum of the American Latino Community to develop a plan of action for the establishment and maintenance of a National Museum of the American Latino Community in Washington, D.C., and for other purposes.

S. 2502

At the request of Mr. CRAIG, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. 2502, a bill to allow seniors to file their Federal income tax on a new Form 1040S.

S. 2522

At the request of Mr. NELSON of Florida, his name was added as a cosponsor of S. 2522, a bill to amend title 38, United States Code, to increase the maximum amount of home loan guaranty available under the home loan guaranty program of the Department of Veterans Affairs, and for other purposes.

S. 2533

At the request of Ms. MIKULSKI, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 2533, a bill to amend the Public Health Service Act to fund breakthroughs in Alzheimer's disease research while providing more help to caregivers and increasing public education about prevention.

S. CON. RES. 119

At the request of Mr. CAMPBELL, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. Con. Res. 119, a concurrent resolution recognizing that prevention of suicide is a compelling national priority.

S. RES. 311

At the request of Mr. KOHL, his name was added as a cosponsor of S. Res. 311, a resolution calling on the Government of the Socialist Republic of Vietnam to immediately and unconditionally release Father Thadeus Nguyen Van Ly, and for other purposes.

S. RES. 357

At the request of Mr. CAMPBELL, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. Res. 357, a resolution designating the week of August 8 through August 14, 2004, as ''National Health Center Week''.

S. RES. 370

At the request of Ms. CANTWELL, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. Res. 370, a resolution designating September 7, 2004, as ''National Attention Deficit Disorder Awareness Day''.

S. RES. 387

At the request of Mr. FEINGOLD, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. Res. 387, a resolution commemorating the 40th Anniversary of the Wilderness Act.

AMENDMENT NO. 3302

At the request of Mr. NELSON of Florida, his name was added as a cosponsor of amendment No. 3302 intended to be proposed to S. 2400, an original bill to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes.

AMENDMENT NO. 3303

At the request of Mr. CORZINE, the names of the Senator from Washington (Mrs. MURRAY), the Senator from Nebraska (Mr. NELSON), the Senator from New Mexico (Mr. BINGAMAN) and the Senator from Arkansas (Mrs. LINCOLN) were added as cosponsors of amendment No. 3303 proposed to S. 2400, an original bill to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes.

AMENDMENT NO. 3315

At the request of Ms. LANDRIEU, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of amendment No. 3315 proposed to S. 2400, an original bill to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes.

At the request of Mr. ENSIGN, his name was added as a cosponsor of amendment No. 3315 proposed to S. 2400, supra.

AMENDMENT NO. 3353

At the request of Mr. REED, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of amendment No. 3353 proposed to S. 2400, an original bill to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes.

AMENDMENT NO. 3371

At the request of Mr. INHOFE, his name was added as a cosponsor of amendment No. 3371 proposed to S. 2400, an original bill to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes.

AMENDMENT NO. 3377

At the request of Mr. CORZINE, his name was added as a cosponsor of amendment No. 3377 proposed to S. 2400, an original bill to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes.

AMENDMENT NO. 3409

At the request of Mr. CORZINE, his name was added as a cosponsor of amendment No. 3409 proposed to S. 2400, an original bill to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes.

AMENDMENT NO. 3459

At the request of Mr. BINGAMAN, the name of the Senator from West Virginia (Mr. ROCKEFELLER) was added as a cosponsor of amendment No. 3459 proposed to S. 2400, an original bill to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes.

AMENDMENT NO. 3468

At the request of Mr. DASCHLE, the names of the Senator from South Dakota (Mr. JOHNSON), the Senator from New York (Mrs. CLINTON), the Senator from Arkansas (Mrs. LINCOLN), the Senator from Washington (Ms. CANTWELL), the Senator from New Jersey (Mr. CORZINE) and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of amendment No. 3468 proposed to S. 2400, an original bill to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. JOHNSON:

S. 2561. A bill to amend title 38, United States Code, to provide for certain servicemembers to become eligible for educational assistance under the Montgomery GI Bill; to the Committee on Veterans' Affairs.

Mr. JOHNSON. Mr. President, I rise today to introduce a very important piece of legislation, the Montgomery GI Bill Enhancement Act. This bill will allow a one year open enrollment period for thousands of career military personal who are not allowed to sign up for education benefits under the Montgomery GI Bill (MGIB).

In 1976 Congress created the Veterans' Educational Assistance Program (VEAP) as a recruitment and retention tool for the post-Vietnam era. However, Congress greatly expanded education benefits in 1984 and allowed individuals with VEAP accounts to transfer their benefits to the new MGIB in 1996. The opportunity to convert to MGIB was important because the benefits available were much greater than those under VEAP.

However, those individuals who were on active duty before 1985 and did not participate in VEAP were not eligible to sign-up for MGIB, leaving a gap in available coverage for certain career military personnel. Congress has voted several times in the last decade to allow VEAP participants opportunities to transfer to MGIB, but there has never been an opportunity for those who did not have VEAP accounts to sign up for the new program, excluding them from taking advantage of MGIB educational benefits.

My bill would correct this inequity and allow individuals falling into this gap to attain MGIB benefits. Organizations such as the Non-Commissioned Officers Association, the Association of the United States Army, and the Military Coalition have come out in strong support for this legislation.

I believe that we must do more to honor our Nation's commitments to our military personnel. As the father of a soldier in the Army, I fully appreciate what a poor ''quality of life'' can do to the morale of military families. We have a long way to go, but I will continue to work with my colleagues to make sure our country's military personnel receive the benefits they deserve.

Today, there are fewer than 74,000 VEAP ''decliners'' on active duty. These men and women have dedicated their lives to a career of service to the Nation, and many are deployed in harms way leading our troops in Iraq and Afghanistan.

For these servicemen and women—many of whom are reaching retirement eligibility—time is running out. Therefore, before it is too late, I encourage my Senate colleagues to support the Montgomery GI Bill Enhancement Act and provide our servicemen and women with the benefits they deserve.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2561

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Montgomery GI Bill Enhancement Act of 2004''.

SEC. 2. OPPORTUNITY FOR CERTAIN ACTIVE-DUTY PERSONNEL TO ENROLL UNDER THE MONTGOMERY GI BILL.

(a) IN GENERAL.—Chapter 30 of title 38, United States Code, is amended by inserting after section 3018C the following new section:

''§ 3018D. Opportunity for certain active-duty personnel to enroll

''(a)(1) Notwithstanding any other provision of this chapter, during the one-year period beginning on the date of the enactment of this section, a qualified individual (described in subsection (b)) may make an irrevocable election under this section to become entitled to basic educational assistance under this chapter.

''(2) The Secretary of each military department shall provide for procedures for a qualified individual to make an irrevocable election under this section in accordance with regulations prescribed by the Secretary of Defense for the purpose of carrying out this section or which the Secretary of Homeland Security shall provide for such purpose with respect to the Coast Guard when it is not operating as a service in the Navy.

''(b) A qualified individual referred to in subsection (a) is an individual who meets each of the following requirements:

''(1) The individual first became a member of the Armed Forces or first entered on active duty as a member of the Armed Forces before July 1, 1985.

''(2) The individual has served on active duty without a break in service since the date the individual first became such a member or first entered on active duty as such a member and continues to serve on active duty for some or all of the one-year period referred to in subsection (a).

''(3) The individual, before applying for benefits under this section, has completed the requirements of a secondary school diploma (or equivalency certificate) or has successfully completed (or otherwise received academic credit for) the equivalent of 12 semester hours in a program of education leading to a standard college degree.

''(4) The individual, when discharged or released from active duty, is discharged or released therefrom with an honorable discharge.

''(c)(1) Subject to the succeeding provisions of this subsection, with respect to a qualified individual who makes an election under this section to become entitled to basic educational assistance under this chapter—

''(A) the basic pay of the qualified individual shall be reduced (in a manner determined by the Secretary concerned) until the total amount by which such basic pay is reduced is $2,700; and

''(B) to the extent that basic pay is not so reduced before the qualified individual's discharge or release from active duty as specified in subsection (b)(4), at the election of the qualified individual—

''(i) the Secretary concerned shall collect from the qualified individual; or

''(ii) the Secretary concerned shall reduce the retired or retainer pay of the qualified individual by,

an amount equal to the difference between $2,700 and the total amount of reductions under subparagraph (A), which shall be paid into the Treasury of the United States as miscellaneous receipts.

''(2)(A) The Secretary concerned shall provide for an 18-month period, beginning on the date the qualified individual makes an election under this section, for the qualified individual to pay that Secretary the amount due under paragraph (1).

''(B) Nothing in subparagraph (A) shall be construed as modifying the period of eligibility for and entitlement to basic educational assistance under this chapter applicable under section 3031 of this title.

''(d) With respect to qualified individuals referred to in subsection (c)(1)(B), no amount of educational assistance allowance under this chapter shall be paid to the qualified individual until the earlier of the date on which—

''(1) the Secretary concerned collects the applicable amount under clause (i) of such subsection; or

''(2) the retired or retainer pay of the qualified individual is first reduced under clause (ii) of such subsection.

''(e) The Secretary, in conjunction with the Secretary of Defense, shall provide for notice of the opportunity under this section to elect to become entitled to basic educational assistance under this chapter.''.

(b) CONFORMING AMENDMENTS.—Section 3017(b)(1) of such title is amended—

(1) in subparagraphs (A) and (C), by striking ''or 3018C(e)'' and inserting ''3018C(e), or 3018D(c)''; and

(2) in subparagraph (B), by inserting ''or 3018D(c)'' after ''under section 3018C(e)''.

(c) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 30 of such title is amended by inserting after the item relating to section 3018C the following new item:

''3018D. Opportunity for certain active-duty personnel to enroll.''.

By Mr. BAUCUS:

S. 2562. A bill to amend title XVIII of the Social Security Act provide incentives for the furnishing of quality care under Medicare Advantage plans and by end stage renal disease providers and facilities, and for other purposes; to the Committee on Finance.

Mr. BAUCUS. Mr. President, I rise today to introduce the ''Medicare Quality Improvement Act of 2004.''

This bill will establish a new payment incentive structure for quality health care, starting with the Medicare Advantage and End Stage Renal Disease programs. Under this policy, Medicare would give a financial boost to plans and renal care providers demonstrating the highest quality care and a bonus to those that are working hard to improve.

Why focus on quality? I hear from all corners that the U.S. health care system is unsustainable in its current form. Costs are rising, and the care provided is not always appropriate or necessary. Not to mention that 43 million Americans lack health insurance.

As I travel around Montana, I hear so much from so many constituents about the rising cost of health care. Countless parents tell me they are struggling to pay for health care for their families, afraid that one more illness will force them into bankruptcy. Working people tell me they fear their employers will raise their premiums or drop

coverage altogether due to rising health care costs. And employers, both large industries and small enterprises, tell me they face competition from companies in countries where healthcare is significantly less expensive. While these employers are trying to keep jobs at home, health care costs are pushing them abroad.

And most recently, my personal experience with the health care system has brought the issue of health costs and quality even closer to home.

A few weeks ago, I chose to have an elective procedure to keep my heart healthy. I have excellent health care coverage, and I was able to seek out excellent doctors and nurses at the Mayo Clinic. In short, I am fortunate that the care I received was high-quality care. The doctors and nurses who took care of me were on the ball—making sure I got the right medications with no dangerous interactions, using proper surgical safety so I wouldn't get an infection, and providing good follow-up care so I could get back to my family and back to work.

My experience with the health system was a positive one. Unfortunately, not everyone is as lucky. Ninety-eight thousand people die every year in this country as a result of medical errors. That's 270 people each day. An appalling statistic. Many of these deaths can be prevented, and we must work to make sure that they are.

In addition to the cases of medical error we know about, there are many that go unreported and even undetected. Studies have shown that patients in the U.S. receive recommended care and treatment when they visit the doctor or hospital only about half of the time. Failure to follow proper patterns of care or recommended guidelines can lead to poor outcomes, and it is also more expensive in the short and long run.

Errors can mean more trips to the hospital or to the doctor, more drugs, and sometimes even additional surgeries. Each preventable medication error costs about $4,700 in added hospital costs alone, not to mention the personal costs of childcare and lost wages, and the societal costs of lost productivity.

While not as fatal as actual errors, missed health care opportunities also carry a cost. Each year, missed health care opportunities—inappropriate care and generally poor quality care costs the U.S. health system more than $1 billion dollars in avoidable hospital bills and 41 million lost work days, which costs American businesses about $11.5 billion. Improving the quality of health care can reduce health care costs and stimulate our economy. In a time of slow economic growth and large deficits, health care is a compelling place to start.

Last year's Medicare Modernization Act got the ball rolling. The Medicare bill ties hospital reimbursement to reporting data on specific quality indicators. And hospitals are responding. Today, almost 2,000 hospitals are sharing data with the Centers for Medicare and Medicaid on at least one of the quality measures. Knowing more about the care that is delivered across the country should help us target incentives and resources to improve quality. It also provides employers and patients with new information about where to find the best deal for their health care dollar. And it also provides hospitals a way to compare their performance to other hospitals.

The bill I am introducing today builds on this strong start. It would establish a mechanism to pay for quality in the Medicare Advantage and End Stage Renal Disease Programs, through bonus payments for the best quality nationwide and bonuses for improving from one year to the next. Rewards for improvement are an important piece of my proposal—last year, the top ten percent of health plans in the country reported perfect scores on a set of quality indicators. There is no doubt that they deserve recognition. But we don't want to leave behind smaller or historically poorer-performing organizations that are making major strides to improve.

Medicare Advantage plans, which tend to utilize a coordinated model of care, have a unique opportunity to impact a patient's health outcomes—plans have access to information about a patient's medical history, and can follow patients more closely to ensure that they are receiving appropriate preventive, acute, and follow-up care. Medicare Advantage plans can translate their own payments into quality incentives downstream. They can reward providers for performing certain procedures known to be effective, or for prescribing drugs known to have equal or greater effectiveness at a reduced cost. And they can improve a beneficiary's preventive and wellness benefits.

Dialysis clinics that participate in Medicare through the program for patients with End Stage Renal Disease have a momentous mission, helping these patients enjoy life for years longer than we might have thought possible just a few decades ago. Because dialysis is such a complex operation, quality of care is extremely important.

Plans and providers in the Medicare Advantage and ESRD programs have already started measuring and reporting on quality, which makes them an excellent place to start. But I want to be clear these programs should not be singled out simply because they are ahead of the game. Working with ESRD providers and Medicare Advantage plans heralds the beginning of a longer journey, and we need to stay the course.

First, we need to monitor this quality incentive program and ensure that the methods used to measure health care quality and evaluate performance are evidence-based and valid.

Second, we should evaluate the impact of a pay-for-performance program on health plans and providers—particularly small organizations and those that are just entering the market. Additionally, because last year's Medicare legislation made payment and policy changes to these providers—for example, a short-term payment increase for ESRD and a new payment policy and the addition of regional plans for Medicare Advantage—we would need to keep a close eye on the consequences of these changes and the interaction with the pay-for-performance quality initiative and take action where necessary.

Third, we should look with a wide lens and move forward with quality initiatives in all government health care programs. It is our responsibility to set an example for the industry through quality improvement programs in Medicare and Medicaid, including traditional fee-for-service Medicare.

As I mentioned, the National Voluntary Hospital Reporting Initiative is a groundbreaking program, but we need to do more in traditional Medicare to encourage high quality care. My bill sketches out a roadmap that will lead us toward expanding the quality measures currently collected for fee-for-service providers, and ultimately toward additional Medicare payment systems that promote quality improvement.

We can also do more to focus on quality care in Medicaid. Today, there are a number of people at the Centers for Medicare and Medicaid Services whose responsibility it is to improve the quality of care in Medicare. On the Medicaid side, there is one person—one person who, while given the responsibility for quality, has no resources or authority to develop program innovations.

You might say that quality is already addressed in Medicaid. I applaud my colleague and Chairman of the Finance Committee, Senator GRASSLEY, for encouraging CMS to increase its quality improvement activities for home and community-based services in Medicaid. We should build on this foundation and broaden the effort. We need to identify barriers to quality improvement throughout the Medicaid program, and take steps toward removing those barriers.

The bill I introduce today would target a few of those barriers, and it would require further studies to identify others. It authorizes money to hire new staff—experienced health professionals—to improve the quality and coordination of care delivered to Medicaid beneficiaries. It explores ways to integrate data on Medicaid beneficiaries who are also enrolled in Medicare—the dual-eligibles and coordinate the care they receive from both programs. Many dual-eligibles are among the sickest and costliest beneficiaries. By better coordinating their care we can improve health outcomes and save money in both programs at once.

As you can tell, I have a lot of ideas. But I have only scratched the surface of this issue and am deeply committed to working with my colleagues in the

Senate to move forward. This bill is a good start, but it is just that—a start. We must do more.

Many of my colleagues in the Senate also care deeply about improving the health care system, and I commend their efforts to develop courageous proposals that will spark change. Senator CLINTON introduced a bill last year, the Health Information for Quality Improvement Act. More recently, Senator KENNEDY Introduced the Health Care Modernization, Cost Reduction, and Quality Improvement Act.

These bills lay out a comprehensive array of policies to improve health care quality and reduce costs, and my bill focuses on one piece of that picture—paying for quality. They represent the gold standard toward which we should all be working. But we share a common goal to make the most of the American health care dollar, so that we can provide better care to more people.

As I mentioned, health care in this country is more expensive than it is elsewhere. But we don't necessarily get more for our money. The United States spends twice as much on health care than any other country, but studies have shown that quality is about the same. Better in some areas, worse in others, but all in all about the same. No matter how you cut it, that means that the value of our health care—what we are getting for each dollar is less in the United States than in other developed countries.

I've always believed that Americans were all about value. We are the country of start-up companies and the home of Wal-Mart. We know about good business, and we know about hard work. We should know more—and do more—about health care.

We are an amazing country, but today our health care system is sick. Why? It is not the fault of hard-working doctors and nurses who put in long hours to make their patients healthy. It is our fault. We need to support the work of health care professionals by providing the right resources and designing payment systems to promote quality. Today, it takes an average 17 years for a new discovery in medical care to move from the lab bench into regular clinical practice. And for providers working in settings without regular Internet access or without the luxury of time to peruse medical journals, it may take even longer. As Members of Congress, we have the opportunity to change the system, to provide incentives for good care, funding for research into best medical practices, and to require the development and reporting of quality measures.

The road to this goal is long and difficult. I call on my colleagues for their energy and support, and I call on health care professionals and the health insurance industry to work with us. This is challenging work, and involves many difficult decisions. But I've never been one to shirk a challenge, and I hope you will join me. This bill is the beginning of what must be a strong bipartisan push to improve our health care system—to increase quality of care, to reduce costs, and to strengthen the American spirit.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2562

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) IN GENERAL.—This Act may be cited as the ''Medicare Quality Improvement Act of 2004''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

SEC. 2. FINDINGS.

The Senate makes the following findings:

(1) The Institute of Medicine has highlighted problems with our health care system in the areas of quality and patient safety.

(2) The New England Journal of Medicine has published research in an article entitled ''The Quality of Health Care Delivered to Adults in the United States'' showing that adults in the United States receive recommended health care only about ½ of the time.

(3) Payment policies under the medicare program do not include mechanisms designed to improve the quality of care.

(4) The medicare program should reward health care providers who show, through measurement and reporting of quality indicators and through the practice of innovations, that they are working to deliver high quality health care to their patients.

(5) Reimbursement for services provided under the original medicare fee-for-service program under parts A and B of title XVIII of the Social Security Act should be based on a pay-for-performance system.

(6) A more aggressive research agenda on the development of appropriate quality measurement and payment methodologies under the medicare program is necessary.

SEC. 3. MEDICARE ADVANTAGE AND REASONABLE COST REIMBURSEMENT CONTRACT QUALITY PERFORMANCE INCENTIVE PAYMENT PROGRAM.

(a) PROGRAM.—Part C of title XVIII of the Social Security Act, as amended by section 241 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2214), is amended by adding at the end the following new section:

''QUALITY PERFORMANCE INCENTIVE PAYMENT PROGRAM

''SEC. 1860C–2. (a) PROGRAM.—

''(1) IN GENERAL.—The Secretary shall establish a program under which financial incentive payments are provided each year to Medicare Advantage organizations offering Medicare Advantage plans and organizations that are providing benefits under a reasonable cost reimbursement contract under section 1876(h) that demonstrate the provision of superior quality health care to enrollees under the plan or contract.

''(2) PROGRAM TO BEGIN IN 2007.—The Secretary shall establish the program so that National Performance Quality Payments (described in subsection (c)) and National Quality Improvement Payments (described in subsection (d)) are made with respect to 2007 and each subsequent year.

''(3) REQUIREMENT.—In order for an organization to be eligible for a financial incentive payment under this section with respect to a Medicare Advantage plan or a reasonable cost reimbursement contract under section 1876(h), the organization shall—

''(A) provide for the collection, analysis, and reporting of data pursuant to sections 1852(e)(3) and 1876(h)(8), respectively, with respect to the plan or contract; and

''(B) not later than a date specified by the Secretary during each baseline year (as defined in subsection (d)(4)), submit such data on the quality measures described in subsection (e)(2) as the Secretary determines appropriate for the purpose of establishing a baseline with respect to the plan or contract.

''(4) USE OF MOST RECENT DATA.—Financial incentive payments under this section shall be based upon the most recent available quality data.

''(5) TIMING OF QUALITY INCENTIVE PAYMENTS.—The Secretary shall ensure that financial incentive payments under this section with respect to a year are made by March 1 of the subsequent year.

''(6) APPLICABILITY OF PROGRAM TO MA PLANS.—For purposes of this section, the term 'Medicare Advantage plan' shall—

''(A) include both MA regional plans and MA local plans; and

''(B) not include an MA plan described in subparagraph (A)(ii) or (B) of section 1851(a)(2).

''(b) QUALITY INCENTIVE PAYMENTS.—

''(1) IN GENERAL.—Beginning with 2007, the Secretary shall allocate the total amount available for financial incentive payments in the year under subsection (f) as follows:

''(A) The per beneficiary payment amount for National Performance Quality Payments established under paragraph (2) shall be greater than the per beneficiary payment amount for National Quality Improvement Payments established under such paragraph.

''(B) With respect to National Performance Quality Payments, the per beneficiary payment amount established under paragraph (2) shall be greatest for the organizations offering the highest performing plans or contracts.

''(C) With respect to National Quality Improvement Payments, the per beneficiary

payment amount established under paragraph (2) shall be greatest for the organizations offering plans or contracts with the highest degree of improvement.

''(2) AMOUNT OF QUALITY INCENTIVE PAYMENT.—

''(A) IN GENERAL.—The amount of a financial incentive payment under subsection (c) or (d) to a Medicare Advantage organization with respect to a Medicare Advantage plan or to an organization with respect to a reasonable cost reimbursement contract under section 1876(h) shall be determined by multiplying the number of beneficiaries enrolled under the plan or contract on the first day of the year for which the payment is provided by a dollar amount established by the Secretary (in this section referred to as the 'per beneficiary payment amount') that is the same for all beneficiaries enrolled under the plan or contract.

''(B) LIMITATION ON TOTAL AMOUNT OF QUALITY INCENTIVE PAYMENTS.—The total amount of all the financial incentive payments given with respect to a year shall be equal to the amount available for such payments in the year under subsection (f).

''(3) USE OF QUALITY INCENTIVE PAYMENTS.—Financial incentive payments received under this section may only be used for the following purposes:

''(A) To reduce any beneficiary cost-sharing applicable under the plan or contract.

''(B) To reduce any beneficiary premiums applicable under the plan or contract.

''(C) To initiate, continue, or enhance health care quality programs for enrollees under the plan or contract.

''(D) To improve the benefit package under the plan or contract.

''(4) REPORTING ON USE OF QUALITY INCENTIVE PAYMENTS.—Beginning in 2008, each MA organization that receives a financial incentive payment under this section shall report to the Secretary pursuant to section 1854(a)(7) on how the organization will use such payment.

''(5) LIMITATIONS ON QUALITY INCENTIVE PAYMENTS.—

''(A) PLAN ONLY ELIGIBLE FOR 1 PAYMENT IN A YEAR.—A Medicare Advantage organization offering a Medicare Advantage plan or an organization that is providing benefits under a reasonable cost reimbursement contract under section 1876(h) may not receive more than 1 financial incentive payment under this section in a year with respect to such plan or contract. If an organization with respect to the plan or contract is eligible for a National Performance Quality Payment and a National Quality Improvement Payment, the organization shall be given the National Performance Quality Payment.

''(B) PLAN MUST BE AVAILABLE FOR ENTIRE YEAR.—A Medicare Advantage organization offering a Medicare Advantage plan or an organization that is providing benefits under a reasonable cost reimbursement contract under section 1876(h) is not eligible for a financial incentive payment under this section with respect to such plan or contract unless the plan or contract offers benefits throughout the year in which the payment is provided.

''(c) NATIONAL PERFORMANCE QUALITY PAYMENTS.—The Secretary shall make National Performance Quality Payments to the Medicare Advantage organizations and organizations offering reasonable cost reimbursement contracts under section 1876(h) with respect to each Medicare Advantage plan or reasonable cost contract offered by the organization that receives ratings for the year in the top applicable percent of all plans and contracts rated by the Secretary pursuant to subsection (e) for the year. For purposes of the preceding sentence, the term 'applicable percent' means a percent determined appropriate by the Secretary in consultation with the Quality Advisory Board, but in no case less than 20 percent.

''(d) NATIONAL QUALITY IMPROVEMENT PAYMENTS.—

''(1) IN GENERAL.—Subject to paragraph (2), the Secretary shall make National Quality Improvement Payments to Medicare Advantage organizations and organizations offering reasonable cost reimbursement contracts under section 1876(h) with respect to each Medicare Advantage plan or reasonable cost reimbursement contract offered by the organization that receives a rating under subsection (e) for the payment year that exceeds the rating received under such subsection for the plan or contract for the baseline year.

''(2) NATIONAL IMPROVEMENT STANDARD.—Beginning with 2009, the Secretary may implement a national improvement standard that Medicare Advantage plans and reasonable cost reimbursement contracts must meet in order to receive a National Quality Improvement Payment.

''(3) APPLICATION OF THRESHOLDS.—In determining whether a rating received under subsection (e) for the payment year exceeds the rating received under such subsection for the baseline year, the Secretary shall hold any applicable thresholds constant. For purposes of the preceding sentence, the term 'threshold' means norms used to assess performance.

''(4) BASELINE YEAR DEFINED.—In this subsection, the term 'baseline year' means the year prior to the payment year.

''(e) RATING METHODOLOGY.—

''(1) SCORING AND RANKING SYSTEMS.—

''(A) IN GENERAL.—The Secretary shall develop separate scoring and ranking systems for purposes of determining which organizations offering Medicare Advantage plans and reasonable cost reimbursement contracts under section 1876(h) qualify for—

''(i) National Performance Quality Payments; and

''(ii) National Quality Improvement Payments.

''(B) REQUIREMENTS.—In developing, implementing, and updating the scoring and ranking systems, the Secretary shall—

''(i) consult with the Quality Advisory Board established under section 1898;

''(ii) take into account the report on health care performance measures submitted by the Institute of Medicine of the National Academy of Sciences under section 238 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003; and

''(iii) take into account the Managed Care Organization (MCO) standards and guideline methodology of the National Committee for Quality Assurance for awarding total Health Plan Employer Data and Information Set (HEDIS) points (based on HEDIS and Consumer Assessment of Health Plans Survey (CAHPS) measures).

''(2) MEASURES.—

''(A) IN GENERAL.—Subject to subparagraph (B), in developing the scoring and ranking systems under paragraph (1), the Secretary shall use all measures determined appropriate by the Secretary. Such measures may include—

''(i) outcome measures for highly prevalent chronic conditions;

''(ii) audited HEDIS outcomes and process measures, CAHPS data, and other data reported to the Department of Health and Human Services; and

''(iii) the Joint Commission on Accreditation of Healthcare Organizations core measures.

''(B) SCORING AND RANKING SYSTEM FOR NATIONAL PERFORMANCE QUALITY PAYMENTS ONLY BASED ON MEASURES OF CLINICAL EFFECTIVENESS.—The scoring and ranking system for National Performance Quality Payments shall only include measures of clinical effectiveness.

''(3) WEIGHTS OF MEASURES.—In developing the scoring and ranking systems under paragraph (1), the Secretary shall assign weights to the measures used by the Secretary under such system pursuant to paragraph (2). In assigning such weights, the Secretary shall provide greater weight to the measures that measure clinical effectiveness.

''(4) RISK ADJUSTMENT.—In developing the scoring and ranking systems under paragraph (1), the Secretary shall establish procedures for adjusting the data used under the system to take into account differences in the health status of individuals enrolled under Medicare Advantage plans and reasonable cost contracts.

''(5) UPDATE.—

''(A) IN GENERAL.—The Secretary shall as determined appropriate, but in no case more often than once each 12-month period, update the scoring and ranking systems developed under paragraph (1), including the measures used by the Secretary under such system pursuant to paragraph (2), the weights established pursuant to paragraph (3), and the risk adjustment procedures established pursuant to paragraph (4).

''(B) COMPARISON FOR NATIONAL QUALITY IMPROVEMENT PAYMENTS.—Each update under subparagraph (A) of the scoring and ranking system for National Quality Improvement Payments shall allow for the comparison of data from one year to the next for purposes of identifying which plans or contracts will receive such Payments.

''(C) CONSULTATION.—In determining when and how to update the scoring and ranking systems under subparagraph (A), the Secretary shall consult with the Quality Advisory Board.

''(f) FUNDING OF PAYMENTS.—The amount available for financial incentive payments under this section with respect to a year shall be equal to the amount of the reduction in expenditures under the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund in the year as a result of the amendments made by section 3(b) of the Medicare Quality Improvement Act of 2004.''.

(b) REDUCTION IN PAYMENTS TO ORGANIZATIONS IN ORDER TO FUND PROGRAM.—

(1) MA PAYMENTS.—

(A) IN GENERAL.—Section 1853(j) of the Social Security Act (42 U.S.C. 1395w–23(j)), as added by section 222(d) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2200), is amended—

(i) in subparagraphs (A) and (B) of paragraph (1), by inserting ''and, beginning in 2007, reduced by 2 percent in the case of an MA plan described in subparagraph (A)(i) or (C) of section 1851(a)(2)'' before the semicolon at the end; and

(ii) in paragraph (2), by inserting ''and, beginning in 2007, reduced by 2 percent in the case of an MA plan described in subparagraph (A)(i) or (C) of section 1851(a)(2)'' before the period at the end.

(B) REDUCTIONS IN PAYMENTS DO NOT EFFECT THE GOVERNMENT SAVINGS FOR BIDS BELOW THE BENCHMARK.—Section 1854(b)(1)(C)(i) of the Social Security Act (42 U.S.C. 1395w–24(b)(1)(C)(i)), as added by section 222(b) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2196), is amended—

(i) by striking ''75 percent'' and inserting ''100 percent''; and

(ii) by inserting the following before the period at the end: '', reduced by 25 percent of such average per capita savings (if any), as applicable to the plan and year involved, that would be computed if sections 1853(j) and 1860C–1(e)(1) was applied by substituting

'zero percent' for '2 percent' each place it appears''.

(2) REASONABLE COST CONTRACT PAYMENTS.—Section 1876(h) of the Social Security Act (42 U.S.C. 1395mm(h)) is amended by adding at the end the following new paragraph:

''(6) Notwithstanding the preceding provisions of this subsection, the Secretary shall reduce each payment to an eligible organization under this subsection with respect to benefits provided on or after January 1, 2007, by an amount equal to 2 percent of the payment amount. The preceding sentence shall have no effect on payments to eligible organizations for the provision of qualified prescription drug coverage under part D.''.

(3) CCA PAYMENTS.—The first sentence of section 1860C–1(e)(1) of the Social Security Act, as added by section 241 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2214) is amended by inserting '', reduced by 2 percent in the case of an MA plan described in subparagraph (A)(i) or (C) of section 1851(a)(2)'' before the period at the end.

(c) REQUIREMENT FOR REPORTING ON USE OF FINANCIAL INCENTIVE PAYMENTS.—

(1) MA PLANS.—Section 1854(a) of the Social Security Act (42 U.S.C. 1395w–24(a)), as amended by section 222(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2193), is amended—

(A) in paragraph (1)(A)(i), by striking ''or (6)(A)'' and inserting ''(6)(A), or (7)''; and

(B) by adding at the end the following:

''(7) SUBMISSION OF INFORMATION OF HOW FINANCIAL INCENTIVE PAYMENTS WILL BE USED BEGINNING IN 2008.—For an MA plan described in subparagraph (A)(i) or (C) of section 1851(a)(2) for a plan year beginning on or after January 1, 2008, the information described in this paragraph is a description of how the organization offering the plan will use any financial incentive payment that the organization received under section 1860C–2 with respect to the plan.''.

(2) ELIGIBLE ENTITIES WITH REASONABLE COST CONTRACTS.—Section 1876(h) of the Social Security Act (42 U.S.C. 1395mm(h)), as amended by subsection (b)(2), is amended by adding at the end the following new paragraph:

''(7)(A) Not later than July 1 of each year (beginning in 2008), any eligible entity with a reasonable cost reimbursement contract under this subsection that receives a financial incentive payment under section 1860C–2 with respect to each plan year shall submit to the Secretary a report containing the information described in subparagraph (B).

''(B) The information described in this subparagraph is a description of how the organization offering the plan will use any financial incentive payment that the organization received under section 1860C–2 with respect to the plan.''.

(d) SUBMISSION OF QUALITY DATA.—

(1) MA ORGANIZATIONS.—Section 1852(e) of the Social Security Act (42 U.S.C. 1395w–22(e)), as amended by section 722 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2347), is amended—

(A) in paragraph (1), by striking ''an MA private fee-for-service plan or''; and

(B) by striking paragraph (3) and inserting the following new paragraph:

''(3) COLLECTION, ANALYSIS, AND REPORTING.—

''(i) IN GENERAL.—As part of the quality improvement program under paragraph (1), each MA organization shall provide for the collection, analysis, and reporting of data that permits the measurement of health outcomes and other indices of quality.

''(ii) COORDINATION WITH COMMERCIAL ENROLLEE REPORTING REQUIREMENTS.—The Secretary shall establish procedures to ensure the coordination of the reporting requirement under clause (i) with reporting requirements for the organization under this part relating to individuals enrolled with the organization but not under this part. Although such reporting requirements shall be coordinated pursuant to the preceding sentence, the use of the data reported may vary.''.

(2) ELIGIBLE ENTITIES WITH REASONABLE COST CONTRACTS.—Section 1876(h) of the Social Security Act (42 U.S.C. 1395mm(h)), as amended by subsection (c)(2), is amended by adding at the end the following new paragraph:

''(8)(A) With respect to plan years beginning on or after January 1, 2006, an eligible entity with a reasonable cost reimbursement contract under this subsection shall provide for the collection, analysis, and reporting of data that permits the measurement of health outcomes and other indices of quality.

''(B) The Secretary shall establish procedures to ensure the coordination of the reporting requirement under subparagraph (A) with reporting requirements for the entity under this title relating to individuals enrolled with the entity but not receiving benefits under this title.''.

SEC. 4. QUALITY PERFORMANCE INCENTIVE PAYMENT PROGRAM FOR PROVIDERS AND FACILITIES THAT PROVIDE SERVICES TO MEDICARE BENEFICIARIES WITH ESRD.

Section 1881(b) of the Social Security Act (42 U.S.C. 1395rr(b)), as amended by section 623(d)(1) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2313), is amended—

(1) in paragraph (11)(B), by striking ''paragraphs (12) and (13)'' and inserting ''paragraphs (12), (13), and (14)'';

(2) in paragraph (12), by striking ''In lieu of'' and inserting ''Subject to paragraph (14), in lieu of'';

(3) in paragraph (13)(A), in the matter preceding clause (i), by striking ''The payment amounts'' and inserting ''Subject to paragraph (14), the payment amounts''; and

(4) by adding at the end the following new paragraph:

''(14) RENAL DIALYSIS PERFORMANCE INCENTIVE PAYMENT PROGRAM.—

''(A) ESTABLISHMENT OF PROGRAM.—

''(i) IN GENERAL.—The Secretary shall establish a program under which financial incentive payments are provided each year to providers of services and renal dialysis facilities that receive payments under paragraph (12) or (13) and demonstrate the provision of superior quality health care to individuals with end stage renal disease.

''(ii) PROGRAM TO BEGIN IN 2007.—The Secretary shall establish the program so that National Performance Quality Payments (described in subparagraph (C)) and National Quality Improvement Payments (described in subparagraph (D)) are made with respect to 2007 and each subsequent year.

''(iii) REQUIREMENT.—In order for a provider of services or a renal dialysis facility to be eligible for a financial incentive payment under this section, the provider or facility shall, not later than a date specified by the Secretary during the baseline year (as defined in subparagraph (D)(iv)), submit such data on the quality measures as the Secretary determines appropriate for the purpose of establishing a baseline with respect to the provider or facility.

''(iv) USE OF MOST RECENT DATA.—Financial incentive payments under this paragraph shall be based upon the most recent available quality data as provided by the Consolidated Renal Operations in a Web-enabled Network (CROWN) system.

''(v) PEDIATRIC FACILITIES NOT INCLUDED IN PROGRAM.—For purposes of this paragraph, including subparagraph (F)(i), the terms 'renal dialysis facility' and 'facility' do not include a renal dialysis facility at least 50 percent of whose patients are individuals under 18 years of age.

''(B) PAYMENTS.—

''(i) IN GENERAL.—Beginning with 2007, the Secretary shall allocate the total amount available for financial incentive payments in the year under subparagraph (F)(ii) as follows:

''(I) The amount allocated for National Performance Quality Payments shall be greater than the amount allocated for National Quality Improvement Payments.

''(II) With respect to National Performance Quality Payments, the per capita amount of the payments shall be greatest for the organizations offering the highest performing plans or contracts.

''(III) With respect to National Quality Improvement Payments, the per capita amount of the payments shall be greatest for the organizations offering plans or contracts with the highest degree of improvement.

''(ii) AMOUNT OF QUALITY INCENTIVE PAYMENT.—

''(I) IN GENERAL.—The amount of a financial incentive payment under subparagraph (C) or (D) to a provider of services or renal dialysis facility shall be determined by multiplying the number of beneficiaries who received dialysis services from the provider or facility during the year for which the payment is provided by a dollar amount established by the Secretary that is the same with respect to each beneficiary receiving dialysis services from the provider or facility.

''(II) LIMITATION ON TOTAL AMOUNT OF QUALITY INCENTIVE PAYMENTS.—The total amount of all the financial incentive payments given with respect to a year shall be equal to the amount available for such payments in the year under subparagraph (F)(ii).

''(iii) USE OF QUALITY INCENTIVE PAYMENTS.—Financial incentive payments received under this paragraph may be used for the following purposes:

''(I) To invest in information technology systems that will improve the quality of care provided to individuals with end stage renal disease.

''(II) To initiate, continue, or enhance health care quality programs for individuals with end stage renal disease.

''(III) Any other purpose determined appropriate by the Secretary.

''(iv) LIMITATIONS ON QUALITY INCENTIVE PAYMENTS.—

''(I) ONLY ELIGIBLE FOR 1 PAYMENT IN A YEAR.—A provider of services or a renal dialysis facility may not receive more than 1 financial incentive payment under this paragraph in a year. If a provider of services or a renal dialysis facility is eligible for a National Performance Quality Payment and a National Quality Improvement Payment, the organization shall be given the National Performance Quality Payment.

''(II) SERVICES MUST BE AVAILABLE FOR ENTIRE YEAR.—A provider of services or renal dialysis facility is not eligible for a financial incentive payment under this paragraph unless the provider or facility is in operation and providing dialysis services for the entire year for which the payment is provided.

''(C) NATIONAL PERFORMANCE QUALITY PAYMENTS.—The Secretary shall make National Performance Quality Payments to the providers of services and renal dialysis facilities that receive ratings for the year in the top applicable percent of all providers and facilities rated by the Secretary pursuant to subparagraph (E) for the year. For purposes of the preceding sentence, the term 'applicable percent' means a percent determined appropriate by the Secretary in consultation with

the Quality Advisory Board, but in no case less than 20 percent.

''(D) NATIONAL QUALITY IMPROVEMENT PAYMENTS.—

''(i) IN GENERAL.—National Quality Improvement Payments shall be paid to each provider of services and renal dialysis facility that receives ratings under subparagraph (E) for the payment year that exceed the ratings received under such subparagraph for the provider or facility for the baseline year.

''(ii) NATIONAL IMPROVEMENT STANDARD.—Beginning with 2009, the Secretary shall have the authority to implement a national improvement standard that providers of services and renal dialysis facilities must meet in order to receive a National Quality Improvement Payment.

''(iii) APPLICATION OF THRESHOLDS.—In determining whether a rating received under subparagraph (E) for the payment year exceeds the rating received under such subsection for the baseline year, the Secretary shall hold any applicable thresholds constant.

''(iv) BASELINE YEAR DEFINED.—In this subparagraph, the term 'baseline year' means the year prior to the payment year.

''(E) RATING METHODOLOGY.—

''(i) SCORING AND RANKING SYSTEMS.—

''(I) IN GENERAL.—The Secretary shall develop separate scoring and ranking systems for purposes of determining which providers of services and renal dialysis facilities qualify for—

''(aa) National Performance Quality Payments; and

''(bb) National Quality Improvement Payments.

''(II) REQUIREMENTS.—In developing, implementing, and updating the scoring and ranking systems, the Secretary shall—

''(aa) consult with the Quality Advisory Board established under section 1898 and the network administrative organizations designated under subsection (c)(1)(A)(i)(II); and

''(bb) take into account the report on health care performance measures submitted by the Institute of Medicine of the National Academy of Sciences under section 238 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

''(ii) MEASURES.—

''(I) IN GENERAL.—Subject to subclause (II), in developing the scoring and ranking system under clause (i), the Secretary shall use all measures determined appropriate by the Secretary. Such measures may include the following:

''(aa) The measures profiled in the ESRD Clinical Performance Measures (CPM) project of the Centers for Medicare & Medicaid Services.

''(bb) The measures for bone disease to be determined by the K-DOQI project of the National Kidney Foundation.

''(II) Scoring and ranking system for national performance quality payments only based on measures of clinical effectiveness.—The scoring and ranking system for National Performance Quality Payments shall only include measures of clinical effectiveness.

''(iii) WEIGHTS OF MEASURES.—In developing the scoring and ranking systems under clause (i), the Secretary shall assign weights to the measures used by the Secretary under such system pursuant to clause (ii). In assigning such weights, the Secretary shall provide greater weight to the measures that measure clinical effectiveness.

''(iv) RISK ADJUSTMENT.—In developing the scoring and ranking systems under clause (i), the Secretary shall establish procedures for adjusting the data used under the system to take into account differences in the health status of individuals receiving dialysis services from providers of services and renal dialysis facilities.

''(v) UPDATE.—

''(I) IN GENERAL.—The Secretary shall as determined appropriate, but in no case more often than once each 12-month period, update the scoring and ranking systems developed under clause (i), including the measures used by the Secretary under such system pursuant to clause (ii), the weights established pursuant to clause (iii), and the risk adjustment procedures established pursuant to clause (iv).

''(II) COMPARISON FOR NATIONAL QUALITY IMPROVEMENT PAYMENTS.—Each update under subclause (I) of the National Quality Improvement Payments shall allow for the comparison of data from one year to the next for purposes of identifying which providers of services and renal dialysis facilities will receive such Payments.

''(III) CONSULTATION.—In determining when and how to update the scoring and ranking systems under subclause (I), the Secretary shall consult with the Quality Advisory Board.

''(F) FUNDING OF PAYMENTS.—

''(i) REDUCTION IN PAYMENTS.—In order to provide the funding for the financial incentive payments under this paragraph, for each year (beginning with 2007), the Secretary shall reduce each payment under paragraphs (12) and (13) to a provider of service and a renal dialysis facility by an amount equal to 2 percent of the payment.

''(ii) AMOUNT AVAILABLE.—The amount available for financial incentive payments under this section with respect to a year shall be equal to the amount of the reduction in expenditures under the Federal Supplementary Medical Insurance Trust Fund in the year as a result of the application of clause (i).''.

SEC. 5. MEDICARE INNOVATIVE QUALITY PRACTICE AWARD PROGRAM.

(a) ESTABLISHMENT.—The Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall establish a program under which the Secretary shall award bonus payments to entities and individuals providing items and services under the medicare program under title XVIII of the Social Security Act that demonstrate innovative practices, structural improvements, or capacity enhancements that improve the quality of health care provided to medicare beneficiaries by such entities and individuals.

(b) PERIOD OF PROGRAM.—Awards under the program shall be made during 2006, 2007, and 2008.

(c) SELECTION OF RECIPIENTS.—

(1) IN GENERAL.—The Secretary shall ensure that the entities and individuals that receive an award under this section have demonstrated improvements in the quality of health care provided to medicare beneficiaries by such entities and individuals through comparison with a control group or baseline evaluation. For purposes of the program, improvements in the quality of health care provided to medicare beneficiaries shall be defined as providing additional services, such as translator services and health literacy education services, or providing care to an expanded service area or an expanded population through telemedicine, increased cultural competence, or other means, in combination with improved health outcomes or reduced beneficiary costs.

(2) ALL ENTITIES AND INDIVIDUALS ELIGIBLE.—Any entity, including a plan, or individual that is providing services under the medicare program is eligible for receiving an award under this section.

(3) CONSULTATION.—In selecting the recipients of the awards under this section, the Secretary shall consult with the Quality Advisory Board established under section 1898 of the Social Security Act, as added by section 7.

(d) MINIMUM NUMBER OF AWARDS.—The Secretary shall make at least 10 awards under this section in each year of the program.

(e) APPLICATION.—An entity or individual desiring an award under this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may reasonably require.

(f) AMOUNT OF AWARD.—

(1) IN GENERAL.—Subject to paragraph (2) and subsection (h), the Secretary shall determine the amount of awards under this section.

(2) REQUIREMENT.—In determining the amount of awards under this section, the Secretary shall ensure that—

(A) no single award is excessive; and

(B) consideration is given to the number of beneficiaries served by the entity or individual receiving the award.

(g) REPORT.—Not later than 6 months after the date on which the program established under subsection (a) ends, the Secretary shall submit to Congress a report on the program together with such recommendations for legislation or administrative action as the Secretary determines appropriate.

(h) FUNDING.—Out of any funds in the Treasury not otherwise appropriated, there are appropriated $10,000,000 for each of 2006, 2007, and 2008 to carry out this section.

SEC. 6. QUALITY IMPROVEMENT DEMONSTRATION PROGRAM FOR PEDIATRIC RENAL DIALYSIS FACILITIES PROVIDING CARE TO MEDICARE BENEFICIARIES WITH END STAGE RENAL DISEASE.

(a) DEMONSTRATION PROJECTS.—

(1) ESTABLISHMENT.—The Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall conduct a 3-year demonstration program under which the Secretary establishes demonstration projects that encourage pediatric dialysis facilities to provide superior quality health care to individuals with end stage renal disease.

(2) CONSULTATION IN SELECTING SITES.—In selecting the demonstration project sites under this section, the Secretary shall consult with the Quality Advisory Board established under section 1898 of the Social Security Act, as added by section 7.

(3) SUBMISSION OF QUALITY DATA.—Under the demonstration projects, demonstration sites shall select appropriate measures of quality of care provided to individuals eligible for benefits under title XVIII of the Social Security Act who are under 18 years of age and shall report data on such measures to the Secretary.

(4) ASSESSMENT OF MEASURES.—The Secretary, in consultation with the Quality Advisory Board, shall assess the validity and reliability of the measures selected under paragraph (2).

(b) WAIVER AUTHORITY.—The Secretary may waive such requirements of titles XI and XVIII as may be necessary to carry out the purposes of the demonstration program established under this section.

(c) FUNDING.—

(1) IN GENERAL.—Subject to paragraph (2), the Secretary shall provide for the transfer from the Federal Supplementary Medical Insurance Trust Fund under section 1841 of the Social Security Act (42 U.S.C. 1395t) of such funds as are necessary for the costs of carrying out the demonstration program under this section.

(2) BUDGET NEUTRALITY.—In conducting the demonstration program under this section, the Secretary shall ensure that the aggregate expenditures made by the Secretary do

not exceed the amount which the Secretary would have expended if the demonstration program under this section was not implemented.

(d) REPORT.—Not later than 6 months after the date on which the demonstration program established under this section ends, the Secretary shall prepare and submit to Congress a report on the demonstration program together with—

(1) recommendations on whether pediatric renal dialysis facilities should be included in the renal dialysis performance payment program under section 1881(b)(14) of the Social Security Act (42 U.S.C. 1395rr(b)(14)), as added by section 4(4); and

(2) such recommendations for legislation or administrative action as the Secretary determines appropriate.

(e) PEDIATRIC RENAL DIALYSIS FACILITY DEFINED.—The term ''pediatric renal dialysis facility'' means a renal dialysis facility that receives payments under paragraph (12) or (13) of section 1881(b) of the Social Security Act (42 U.S.C. 1395rr(b)) and is not eligible to participate in the renal dialysis performance payment program under paragraph (14) of such section (as added by section 4(4)) because of the application of subparagraph (A)(iv) of such paragraph.

SEC. 7. MEDICARE QUALITY ADVISORY BOARD.

Title XVIII of the Social Security Act, as amended by section 1016 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2447), is amended by adding at the end the following new section:

''QUALITY ADVISORY BOARD

''SEC. 1898. (a) ESTABLISHMENT.—The Secretary shall establish a Medicare Quality Advisory Board (in this section referred to as the 'Board').

''(b) MEMBERSHIP AND TERMS.—

''(1) IN GENERAL.—Subject to paragraphs (3), (4), and (5), the Board shall be composed of representatives described in paragraph (2) who shall serve for such term as the Secretary may specify.

''(2) REPRESENTATIVES.—Representatives described in this subparagraph include representatives of the following:

''(A) Patients or patient advocate organizations.

''(B) Individuals with expertise in the provision of quality care, such as medical directors, heads of hospital quality improvement committees, health insurance plan representatives, and academic researchers.

''(C) Health care professionals and providers.

''(D) Organizations that focus on the measurement and reporting of quality indicators.

''(E) State government health care programs.

''(3) MAJORITY NONPROVIDERS.—Individuals who are directly involved in the provision, or management of the delivery, of items and services covered under this title shall not constitute a majority of the membership of the Board.

''(4) EXPERIENCE WITH URBAN AND RURAL HEALTH CARE ISSUES.—The membership of the Board should be representative of individuals with experience with urban health care issues and individuals with experience with rural health care issues.

''(5) EXPERIENCE ACROSS A SPECTRUM OF ACTIVITIES.—The membership of the Board should be representative of individuals with experience across the spectrum of activities that the Secretary is responsible for with respect to this title, including the coverage of new services and technologies, payment rates and methodologies, beneficiary services, and claims processing.

''(c) DUTIES.—

''(1) INCENTIVE PROGRAMS.—

''(A) ADVICE.—The Board shall advise the Secretary regarding—

''(i) the development, implementation, and updating of the scoring and ranking systems under sections 1860C–2(e) and 1881(b)(14)(E);

''(ii) the determination of the applicable percent for national performance quality payments under sections 1860C–2(c) and 1881(b)(14)(C);

''(iii) the selection of recipients of innovative quality practice awards under the program under section 5 of the Medicare Quality Improvement Act of 2004;

''(iv) the selection of demonstration project sites and the assessment of measures of quality of care under the demonstration program under section 6 of the Medicare Quality Improvement Act of 2004; and

''(v) the study and report under section 8(b) of the Medicare Quality Improvement Act of 2004.

''(B) ANNUAL REPORT ON INCENTIVE PROGRAMS.—The Board shall submit an annual report to the Secretary and Congress on the programs under sections 1860C–2 and 1881(b)(14).

''(C) ADDITIONAL DUTIES.—The Board shall perform such additional functions to assist the Secretary in carrying out the programs described in clauses (ii) and (iii) of subparagraph (A) and in subparagraph (B) as the Secretary may specify.

''(2) DEVELOPMENT AND ASSESSMENT OF NATIONAL PRIORITIES AND AGENDA.—The Board shall develop and assess national priorities and an agenda for improving the quality of items and services furnished to individuals entitled to benefits under this title.

''(d) WAIVER OF ADMINISTRATIVE LIMITATION.—The Secretary shall establish the Board notwithstanding any limitation that may apply to the number of advisory committees that may be established (within the Department of Health and Human Services or otherwise).''.

SEC. 8. STUDIES AND REPORTS ON FINANCIAL INCENTIVES FOR QUALITY ITEMS AND SERVICES UNDER THE MEDICARE PROGRAM.

(a) IOM STUDY AND REPORT ON HOW MEDICARE PAYMENTS FOR ITEMS AND SERVICES AFFECT THE QUALITY OF SUCH ITEMS AND SERVICES.—

(1) STUDY.—The Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall request the Institute of Medicine of the National Academy of Sciences to conduct a study on how the payment mechanisms for items and services under the original medicare fee-for-service program under parts A and B of title XVIII of the Social Security Act effect the quality of such items and services.

(2) REPORT TO CONGRESS.—Not later than January 1, 2006, the Secretary shall submit to Congress a report on the results of the study described in paragraph (1) together with such recommendations for legislation or administrative action as the Secretary determines appropriate.

(b) HHS STUDY AND REPORT ON PROVIDING FINANCIAL INCENTIVES FOR QUALITY SERVICES UNDER THE ORIGINAL MEDICARE FEE-FOR-SERVICE PROGRAM.—

(1) STUDY.—The Secretary of Health and Human Services shall conduct a study on the actions necessary to establish a payment system under the original medicare fee-for-service program under parts A and B of title XVIII of the Social Security Act that aligns the quality of services provided under such program with the reimbursement provided under such program for such services.

(2) REPORT.—

(A) IN GENERAL.—Not later than January 1, 2008, the Secretary shall submit a report to Congress on the study conducted under paragraph (1).

(B) CONTENTS.—The report submitted under subparagraph (A) shall contain recommendations with respect to—

(i) the incremental steps necessary to develop the payment system described in paragraph (1);

(ii) the performance measures to be used under such payment system;

(iii) the incentive approaches to be used under such payment system;

(iv) the geographic and risk adjusters to be used under such payment system; and

(v) a strategy for aligning payment with performance across all parts of the medicare program.

(3) REQUIREMENT.—In conducting the study under paragraph (1) and preparing the report under paragraph (2), the Secretary shall—

(A) consult with the Quality Advisory Board established under section 1898 of the Social Security Act, as added by section 7; and

(B) take into account the report on health care performance measures submitted by the Institute of Medicine of the National Academy of Sciences under section 238 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2213).

SEC. 9. MEDPAC STUDY AND REPORT ON USE OF ADJUSTER MECHANISMS UNDER MEDICARE QUALITY PERFORMANCE INCENTIVE PAYMENT PROGRAMS.

(a) STUDY.—The Medicare Payment Advisory Commission shall conduct a study—

(1) to determine whether it is appropriate to incorporate a geographic adjuster into the quality performance incentive payment programs under sections 1860C–2 and 1881(b)(14) of the Social Security Act, as added by sections 3 and 4, respectively, to account for different environments of care, regional payment variation, regional variation of patient satisfaction, and regional case mix variation; and

(2) on the most appropriate methods to risk adjust data used under the scoring and ranking system under such programs pursuant to sections 1860C–2(e)(4) and 1881(b)(14)(E)(iv) of the Social Security Act.

(b) REPORT.—Not later than January 1, 2006, the Commission shall submit a report to Congress and the Secretary of Health and Human Services on the study conducted under subsection (a) together with recommendations for such legislation and administrative actions as the Commission considers appropriate. If such study concludes that a geographic adjuster described in subsection (a)(1) is appropriate, the Commission shall include in the report recommendations on how such adjuster could be incorporated into the quality performance incentive payment programs described in such subsection.

SEC. 10. DEMONSTRATION PROGRAM ON MEASURING THE QUALITY OF HEALTH CARE FURNISHED TO PEDIATRIC PATIENTS UNDER THE MEDICAID AND SCHIP PROGRAMS.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall conduct a 3-year demonstration program to examine the development and use of quality measures, pay-for-performance programs, and other strategies in order to encourage providers to furnish superior quality health care to individuals under 18 years of age under the medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) and under the SCHIP program under title XXI of such Act (42 U.S.C. 1397aa et seq.).

(2) AUTHORITY.—The Secretary shall conduct the demonstration program under this section pursuant to the authority provided under this section and not under the authority provided under section 1115 of the Social Security Act (42 U.S.C. 1315).

(b) SITES TO INCLUDE MULTIPLE SETTINGS AND PROVIDERS.—In selecting the demonstration program sites under this section, the Secretary shall ensure that the sites include health care delivery in multiple settings and through multiple providers, such as school-based settings and mental health providers.

(c) WAIVER AUTHORITY.—The Secretary may waive such requirements of titles XI, XIX, and XXI of the Social Security Act (42 U.S.C. 1301 et seq.; 1396 et seq.; 1397aa et seq.) as may be necessary to carry out the purposes of the demonstration program under this section.

(d) FUNDING.—

(1) IN GENERAL.—Subject to paragraph (2), for purposes of conducting the demonstration program under this section, expenditures under the demonstration program shall be treated as medical assistance under section 1903 of the Social Security Act (42 U.S.C. 1396) or child health assistance under section 2105 of such Act (42 U.S.C. 1397).

(2) BUDGET NEUTRALITY.—In conducting the demonstration program under this section, the Secretary shall ensure that the aggregate expenditures made by the Secretary do not exceed the amount which the Secretary would have expended if the demonstration program under this section had not been implemented.

(e) REPORT.—Not later than 6 months after the date on which the demonstration program under this section ends, the Secretary shall submit to Congress a report on the demonstration program together with such recommendations for legislation or administrative action as the Secretary determines appropriate.

SEC. 11. PROVISIONS RELATING TO MEDICAID QUALITY IMPROVEMENTS.

(a) AUTHORIZATION FOR ADDITIONAL STAFF AT THE CENTER FOR MEDICAID AND STATE OPERATIONS.—

(1) ADDITIONAL STAFF.—The Secretary of Health and Human Services shall have the authority to hire 5 full-time employees to be employed within the Center for Medicaid and State Operations within the Centers for Medicare & Medicaid Services from among individuals who have experience with, or have been trained as, health professionals and who have experience in any of the following areas:

(A) Quality improvement.

(B) Chronic care management.

(C) Care coordination.

(2) REQUIREMENT FOE EXPERIENCE WITH PEDIATRIC POPULATIONS.—At least 1 of the individuals employed within the Center for Medicaid and State Operations pursuant to paragraph (1) shall have experience with pediatric populations.

(3) DUTIES OF ADDITIONAL STAFF.—The employees hired under paragraph (1) shall be responsible for developing strategies to access and promote quality improvement, chronic care management, and care coordination with the medicaid program and for providing technical assistance to the States.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this subsection.

(b) CMS STUDY AND REPORT ON MEDICARE AND MEDICAID DATA COORDINATION.—

(1) STUDY.—The Secretary of Health and Human Services shall conduct a study to identify—

(A) efforts to coordinate and integrate data from the medicare program under title XVIII of the Social Security Act and the medicaid program under title XIX of such Act;

(B) barriers to data coordination;

(C) the potential benefits of data integration as perceived by medicare and medicaid program officials, policymakers, health care providers, and beneficiaries; and

(D) steps necessary to coordinate and integrate the beneficiary data from the medicare and medicaid programs.

(2) REPORT TO CONGRESS.—Not later than December 31, 2004, the Secretary of Health and Human Services shall submit to Congress a report on the results of the study conducted under paragraph (1) together with such recommendations for legislation or administrative action as the Secretary determines appropriate.

(c) MEDPAC STUDY AND REPORT ON BENEFICIARIES WHO ARE DUALLY ELIGIBLE FOR MEDICARE AND MEDICAID.—

(1) STUDY.—The Medicare Payment Advisory Commission shall conduct a study to determine the characteristics of individuals who are eligible to receive benefits under both the medicare and medicaid programs under titles XVIII and XIX of the Social Security Act, respectively, identify the costliest groups of individuals who are eligible for benefits under both programs, identify the services used by such individuals, and develop recommendations on how the provision of those services could be better coordinated for improved health outcomes and reduced costs.

(2) REPORT.—Not later than June 30, 2005, the Commission shall submit a report to Congress on the study conducted under paragraph (1) together with recommendations for such legislation and administrative actions as the Commission considers appropriate.

(d) MEDPAC STUDY AND REPORT ON CARE COORDINATION PROGRAMS FOR DUAL-ELIGIBLES.—

(1) STUDY.—The Medicare Payment Advisory Commission shall conduct a study on care coordination programs available to individuals who are eligible to receive benefits under both the medicare and medicaid programs under titles XVIII and XIX of the Social Security Act, respectively, the impact of such care coordination programs on those individuals, the impact of such care coordination programs on the costs of the medicare and medicaid programs to the Federal Government, and whether any savings from care coordination programs are counted as a benefit to either program.

(2) REPORT.—Not later than June 30, 2005, the Commission shall submit a report to Congress on the study conducted under paragraph (1) together with recommendations for such legislation and administrative actions as the Commission considers appropriate.

SEC. 12. DEMONSTRATION PROGRAM FOR MEDICAL SMART CARDS.

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall establish a 5-year demonstration program under which the Secretary shall award grants for the establishment of demonstration projects to provide for the development and use of Medical Smart Cards and to examine the impact of Medical Smart Cards on health care costs, quality of care, and patient safety.

(b) ELIGIBILITY.—To be eligible to receive a grant under subsection (a), an entity shall be a public or private nonprofit entity.

(c) APPLICATION.—An eligible entity desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may reasonably require.

(d) APPROVAL OF APPLICATIONS.—

(1) IN GENERAL.—The Secretary shall approve applications for grants under this section in accordance with criteria established by the Secretary.

(2) LIMITATION.—The Secretary shall approve at least 1 application for a demonstration project that is conducted at a hospital or hospital system with a large rural service area.

(e) USE OF FUNDS.—An eligible entity shall use amounts received under a grant under this section to carry out the purposes described in subsection (a).

(f) REPORT.—Not later than 6 months after the date on which the demonstration program established under subsection (a) ends, the Secretary shall submit to Congress a report on the demonstration program together with such recommendations for legislation or administrative action as the Secretary determines appropriate.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

By Mr. KOHL (for himself and Mr. HATCH):

S. 2563. A bill to require imported explosives to be marked in the same manner as domestically manufactured explosives; to the Committee on the Judiciary.

Mr. KOHL. Mr. President, I rise today with Senator HATCH to introduce the Imported Explosives Security Act. Domestic manufacturers are required to place identification markings on all explosive materials they produce for important security reasons. These markings enable law enforcement officers to determine the source of explosives and help them solve crimes. Yet, these same identifying markings are not required of those explosives manufactured overseas and imported into our country. This impedes law enforcement efforts and poses a security risk.

The legislation we have introduced today is simple and straightforward. The legislation would simply treat imported explosives just like those manufactured inside the United States, requiring all imported explosives to carry the same markings currently placed on domestic explosives. It would require the name of the manufacturer, along with the time, date and shift of manufacture, to be placed on all explosives materials, whether they are manufactured here or abroad. These markings can be a tremendously useful tool for law enforcement officials, enabling investigators to determine the source of explosive materials. According to the Bureau of Alcohol, Tobacco, Firearms and Explosives, the explosives can then be tracked through records kept by those who manufacture and sell them, often leading them to the criminal who has stolen or misused them. At a recent Senate hearing, FBI Director Mueller acknowledged that ''determining the source of the components to any explosive device will assist you in determining who was responsible for any act using such a device.''

The Bureau of Alcohol, Tobacco, Firearms and Explosives first sought to fill this gap in the law when it published a notice of a proposed rulemaking in November 2000. Now, nearly 4 years later, this rulemaking still has not been finalized. Each year, more than 25,000 pounds of stolen, lost, or abandoned explosives are recovered by law enforcement. When explosives do not carry appropriate markings, they

cannot be quickly and effectively traced for criminal enforcement purposes.

Millions of pounds of unmarked explosives have already been distributed in this country. Each day we delay closing this loophole, we let more untraceable explosive materials cross our borders and undermine our national security. Failure to address this very straightforward issue in a timely manner unnecessarily hinders law enforcement's ability to solve crimes. Because the Department of Justice has not issued regulations to close this loophole in a timely manner, it is now incumbent upon us to act for them.

By Mr. CRAPO (for himself, Mr. FITZGERALD, Mr. LUGAR, Mr. SMITH, Mr. WYDEN, Mr. CRAIG, and Mr. ROBERTS):

S. 2565. A bill to amend the Agriculture Adjustment Act to convert the dairy forward pricing program into a permanent program of the Department of Agriculture; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. CRAPO. Mr. President, I rise to introduce the Milk Forward Contracting Act, a bill to make permanent the dairy forward pricing pilot program.

Without question, dairy producers are subject to a very fickle dairy market. Dairy prices can go from all time highs to all time lows over a course of a year, making long-term planning extremely difficult. This legislation will ensure the continued availability of an important risk management tool for dairy producers and enable their long-term business planning.

Over the pat 4 years, dairy producers and processors have been able to voluntarily enter into agreements for the sale of a specific volume of milk for a set price over an established period of time trough the dairy forward pricing pilot program. Many producers in my home State of Idaho and nationwide have used this voluntary program to reduce marketing risk by securing stable prices. Unfortunately, this program expires in December of 2004, and dairy producers want to be able to continue to utilize this program.

Forward contracting is a very useful tool for dairy farmers. In fact, a 2002 U.S. Department of Agriculture USDA report to Congress demonstrated that the program has been effective in reducing price volatility. According to USDA data for the September 2000 through December 2002 period, contracted milk averages $14.06 per hundredweight with a range of $1.63 between high and low prices, while non-contracted milk averaged $13.68 per hundredweight with a range of $6.69. Additionally, the U.S. General Accounting Office GAO reported that forward contracting is a risk management tool most frequently used by producers of other farm commodities.

Likewise, dairy producers should also have access to this important tool. There is no reason that dairy farmers should be forced to ride a dairy price roller coaster, when the extension of this sensible program would provide farm families with an option to help plan for their futures.

By Mr. BINGAMAN (for himself, Mr. CORZINE, Mr. LAUTENBERG, Ms. STABENOW, Mrs. CLINTON, Mr. JOHNSON, Ms. MIKULSKI, Mr. DURBIN, and Mr. DAYTON):

S. 2566. A bill to amend title II of the Social Security Act to phase out the 24-month waiting period for disabled individuals to become eligible for medicare benefits, to eliminate the waiting period for individuals with life-threatening conditions, and for other purposes; to the Committee on Finance.

Mr. BINGAMAN. Mr. President, I rise today to introduce legislation entitled ''Ending the Medicare Disability Waiting Period Act of 2004'' with Senators CORZINE, LAUTENBERG, STABENOW, CLINTON, JOHNSON, MIKULSKI, DURBIN, and DAYTON. This legislation would phase-out the current 2-year waiting period that people with disabilities must endure after qualifying for Social Security Disability Insurance (SSDI). In the interim, the bill would also create a process by which the Secretary can immediately waive the waiting period for people with life-threatening illnesses.

When Medicare was expanded in 1972 to include people with significant disabilities, lawmakers created the 24-month waiting period. According to a July 2003 report from the Commonwealth Fund, it is estimated that over 1.2 million SSDI beneficiaries are in the Medicare waiting period at any given time, ''all of whom are unable to work because of their disability and most of whom have serious health problems, low incomes, and limited access to health insurance.''

As Karen Davis, president of the Commonwealth Fund, said of the report, ''Individuals in the waiting period for Medicare suffer from a broad range of debilitating diseases and are in urgent need of appropriate medical care to manage their conditions. Eliminating the 2-year wait would ensure access to care for those already on the way to Medicare.''

These are people who are the most seriously disabled in our society and most in need of immediate health services. And yet, it is estimated that one-third of the 1.2 million currently federal policy puts the disabled on hold for 2 long years. The consequences are unacceptable and are, in fact, dire.

In fact, various studies show that death rates among SSDI recipients are highest during the first two years of enrollment. For example, the Commonwealth Fund report, entitled Elimination of Medicare's Waiting Period for Seriously Disabled Adults: Impact on Coverage and Costs, 4 percent of these people die during the waiting period. Of the estimated 400,000 uninsured disabled Americans in the waiting period at any given time, 16,000 of them will die awaiting Medicare coverage. This is unacceptable.

Moreover, this does not factor in the serious health problems that others experience while waiting for Medicare coverage during the 2-year period. Although there is no direct data on the profile of SSDI beneficiaries in the 2-year waiting period, the Commonwealth Fund has undertaken a separate analysis of the Medicare Current Beneficiary Survey for 1998 to get a good sense of the demographic characteristics, income, and health conditions of this group.

According to the analysis, ''. . . 45 percent of nonelderly Medicare beneficiaries with disabilities had incomes below the federal poverty line, and 77 percent had incomes below 200 percent of poverty. Fifth-nine percent reported that they were in fair or poor health; of this group, more than 90 percent reported that they suffered from one or more chronic illnesses, including arthritis (52%), hypertension (46%), mental disorder (36%), heart condition (35%), chronic lung disease (26%), cancer (20%), diabetes (19%), and stroke (12%).''

As the Medicare Rights Center has said, ''By forcing Americans with disabilities to wait 24 months for Medicare coverage, the current law effectively sentences these people to inadequate health care, poverty, or death . . . Since disability can strike anyone, at any point in life, the 24-month waiting period should be of concern to everyone, not just the millions of Americans with disabilities today.''

Although elimination of the Medicare waiting period will certainly increase Medicare costs, it is important to note that there will be some corresponding decrease in Medicaid costs. Medicaid, which is financed by both federal and state governments, often provides coverage for a subset of disabled Americans in the waiting period, as long as they meet certain income and asset limits. Income limits are typically at or below the poverty level, including at just 74 percent of the poverty line in New Mexico, with assets generally limited to just $2,000 for individuals and $3,000 for couples.

The Commonwealth Fund estimates that, of the 1.26 million people in the waiting period, 40 percent are enrolled in Medicaid. As a result, the Commonwealth Fund estimates that federal Medicaid savings would offset nearly 30 percent of the increased costs in its study. Furthermore, states, which have been struggling financially with their Medicaid programs, would reap a windfall that would help them better manage their Medicaid programs.

Furthermore, from a continuity of care point of view, it makes little sense that somebody with disabilities must leave their job and their health providers associated with that plan, move on the Medicaid to often have a different set of providers, to then switch to Medicare and yet another set of providers.

And finally, private-sector employers and employees in those risk-pools

would also benefit from the passage of the bill. As the report notes, ''. . . to the extent that disabled adults rely on coverage through their prior employer or their spouse's employer, eliminating the waiting period would also produce savings to employers who provide this coverage.''

I urge passage of this legislation and ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2566

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Ending the Medicare Disability Waiting Period Act of 2004''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

SEC. 2. PHASE OUT OF WAITING PERIOD FOR MEDICARE DISABILITY BENEFITS.

(a) IN GENERAL.—Section 226(b) of the Social Security Act (42 U.S.C. 426(b)) is amended—

(1) in paragraph (2)(A), by striking '', and has for 24 calendar months been entitled to,'' and inserting '', and for the waiting period (as defined in subsection (k)) has been entitled to,'';

(2) in paragraph (2)(B), by striking '', and has been for not less than 24 months,'' and inserting '', and has been for the waiting period (as defined in subsection (k)),'';

(3) in paragraph (2)(C)(ii), by striking '', including the requirement that he has been entitled to the specified benefits for 24 months,'' and inserting '', including the requirement that the individual has been entitled to the specified benefits for the waiting period (as defined in subsection (k)),''; and

(4) in the flush matter following paragraph (2)(C)(ii)(II)—

(A) in the first sentence, by striking ''for each month beginning with the later of (I) July 1973 or (II) the twenty-fifth month of his entitlement or status as a qualified railroad retirement beneficiary described in paragraph (2), and'' and inserting ''for each month beginning after the waiting period (as so defined) for which the individual satisfies paragraph (2) and'';

(B) in the second sentence, by striking ''the 'twenty-fifth month of his entitlement' refers to the first month after the twenty-fourth month of entitlement to specified benefits referred to in paragraph (2)(C) and''; and

(C) in the third sentence, by striking '', but not in excess of 78 such months''.

(b) SCHEDULE FOR PHASE OUT OF WAITING PERIOD.—Section 226 of the Social Security Act (42 U.S.C. 426) is amended by adding at the end the following new subsection:

''(k) For purposes of subsection (b) (and for purposes of section 1837(g)(1) of this Act and section 7(d)(2)(ii) of the Railroad Retirement Act of 1974), the term 'waiting period' means—

''(1) for 2005, 18 months;
''(2) for 2006, 16 months;
''(3) for 2007, 14 months;
''(4) for 2008, 12 months;
''(5) for 2009, 10 months;
''(6) for 2010, 8 months;
''(7) for 2011, 6 months;
''(8) for 2012, 4 months;
''(9) for 2013, 2 months; and
''(10) for 2014 and each subsequent year, 0 months.''.

(c) CONFORMING AMENDMENTS.—

(1) SUNSET.—Effective January 1, 2014, subsection (f) of section 226 of the Social Security Act (42 U.S.C. 426) is repealed.

(2) MEDICARE DESCRIPTION.—Section 1811(2) of such Act (42 U.S.C. 1395c(2)) is amended by striking ''entitled for not less than 24 months'' and inserting ''entitled for the waiting period (as defined in section 226(k))''.

(3) MEDICARE COVERAGE.—Section 1837(g)(1) of such Act (42 U.S.C. 1395p(g)(1)) is amended by striking ''of the later of (A) April 1973 or (B) the third month before the 25th month of such entitlement'' and inserting ''of the third month before the first month following the waiting period (as defined in section 226(k)) applicable under section 226(b)''.

(4) RAILROAD RETIREMENT SYSTEM.—Section 7(d)(2)(ii) of the Railroad Retirement Act of 1974 (45 U.S.C. 231f(d)(2)(ii)) is amended—

(A) by striking '', for not less than 24 months'' and inserting '', for the waiting period (as defined in section 226(k) of the Social Security Act); and

(B) by striking ''could have been entitled for 24 calendar months, and'' and inserting ''could have been entitled for the waiting period (as defined is section 226(k) of the Social Security Act), and''.

(d) EFFECTIVE DATE.—Except as provided in subsection (c)(1), the amendments made by this section shall apply to insurance benefits under title XVIII of the Social Security Act with respect to items and services furnished in months beginning at least 90 days after the date of the enactment of this Act.

SEC. 3. ELIMINATION OF WAITING PERIOD FOR INDIVIDUALS WITH LIFE-THREATENING CONDITIONS.

(a) IN GENERAL.—Section 226(h) of the Social Security Act (42 U.S.C. 426(h)) is amended—

(1) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;

(2) in the matter preceding subparagraph (A) (as redesignated by paragraph (1)), by inserting ''(1)'' after ''(h)'';

(3) in paragraph (1) (as designated by paragraph (2))—

(A) in the matter preceding subparagraph (A) (as redesignated by paragraph (1)), by inserting ''or any other life-threatening condition identified by the Secretary'' after ''amyotrophic lateral sclerosis (ALS)''; and

(4) in subparagraph (B) (as redesignated by paragraph (1)), by striking ''(rather than twenty-fifth month)''; and

(5) by adding at the end the following new paragraph:

''(2) For purposes of identifying life-threatening conditions under paragraph (1), the Secretary shall compile a list of conditions that are fatal without medical treatment. In compiling such list, the Secretary shall consult with the Director of the National Institutes of Health (including the Office of Rare Diseases), the Director of the Centers for Disease Control and Prevention, the Director of the National Science Foundation, and the Institute of Medicine of the National Academy of Sciences.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to insurance benefits under title XVIII of the Social Security Act with respect to items and services furnished in months beginning at least 90 days after the date of the enactment of this Act.

SEC. 4. INSTITUTE OF MEDICINE STUDY AND REPORT ON DELAY AND PREVENTION OF DISABILITY CONDITIONS.

(a) STUDY.—The Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall request that the Institute of Medicine of the National Academy of Sciences conduct a study on the range of disability conditions that can be delayed or prevented if individuals receive access to health care services and coverage before the condition reaches disability levels.

(b) REPORT.—Not later than the date that is 2 years after the date of enactment of this Act, the Secretary shall submit to Congress a report containing the results of the Institute of Medicine study authorized under this section.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $750,000 for the period of fiscal years 2005 and 2006.

By Mrs. FEINSTEIN:

S. 2567. A bill to adjust the boundary of Redwood National Park in the State of California; to the Committee on Energy and Natural Resources.

Mrs. FEINSTEIN. Mr. President, I am pleased to introduce companion legislation to H.R. 3638, a bill introduced by Congressman MIKE THOMPSON in November 2003. This bill will adjust the boundary of Redwood National Park in the State of California to include the addition of the Mill Creek property.

In 2002, the California Department of Parks and Recreation acquired from the Save-the-Redwoods League 25,500 acres of forest land known as the Mill Creek property in Del Norte County, which is contiguous with the Redwood National and State parks boundary. This bill would include within the park boundary the Mill Creek acquisition and about 900 acres of land acquired and added to the State redwood parks since the 1978 expansion of the Redwood National Park boundary. There would be no Federal costs for land acquisition or development resulting from this legislation.

These lands will be managed by the same cooperative management agreement between the National Park Service and the California Department of Parks and Recreation. This partnership is viewed as a model of interagency cooperative management efforts and will provide for more efficient and cost-effective management of an ecologically significant resource.

This bill enjoys strong support from local and Federal officials, including Del Norte County and the Department of the Interior. Given this support and lack of controversy, I believe introducing companion legislation to be of great importance to ensure that our Redwood National Park is further protected.

I have long held a deep interest in protecting California's magnificent Redwoods. The Headwaters Agreement that was negotiated in part in my offices in 1996 protected approximately 7,500 acres of old growth redwoods, which was the largest grove of redwoods held in private ownership at the time.

I applaud Congressman MIKE THOMPSON's commitment to this issue and hope that this bill receives strong bipartisan support.

I urge my colleagues to support this legislation.

By Mr. BIDEN:

S. 2568. A bill to require the Secretary of the Treasury to mint coins in commemoration of the tercentenary of the birth of Benjamin Franklin, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. BIDEN. Mr. President, I rise today to introduce the Benjamin Franklin Commemorative Coin Act. This bill will authorize the U.S. Mint to produce a limited edition silver coin, in two designs, to honor the achievements of Benjamin Franklin, America's distinguished scientist, statesman, inventor and diplomat.

In 2006, the United States will host a worldwide celebration marking the 300th anniversary of Franklin's birth on January 17, 1706. Activities, lectures and exhibits are being developed through the efforts of the Benjamin Franklin Tercentenary Commission, as ordered by the Benjamin Franklin Tercentenary Commission Act, Public Law 107–202. The Commission, on which I serve with other elected officials and private sector partners, is responsible for providing a proper tribute to one of our most remarkable founding fathers. Surcharges on the sale of the coin would help the commission pay for activities it plans for celebrating Benjamin Franklin's birthday.

During the American Revolution, Franklin designed the first American coin—the ''Continental'' penny—and, until 1979, he was the only non-President of the United States whose image graced circulating coin and paper currency. it is only fitting that we honor Franklin's legacy through issuance of a commemorative coin.

This bill is the Senate companion to H.R. 3024, which was introduced by my colleague from Delaware, Congressman MIKE CASTLE, and it presently enjoys 326 cosponsors. As celebrations for our great leader are planned, I hope that my colleagues will join me in supporting a commemorative coin for this important American. I ask unanimous consent that the text of this bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2568

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Benjamin Franklin Commemorative Coin Act''.

SEC. 2. FINDINGS.

Congress finds that—

(1) Benjamin Franklin made historic contributions to the development of our Nation in a number of fields, including government, business, science, communications, and the arts;

(2) Benjamin Franklin was the only Founding Father to sign all of our Nation's organizational documents;

(3) Benjamin Franklin spent his career as a successful printer, which included printing the official currency for the colonies of Pennsylvania, Delaware, New Jersey and Maryland;

(4) Franklin's ''Essay on Paper Currency'' of 1741 proposed methods to fix the rate of exchange between the colonies and Great Britain;

(5) Benjamin Franklin, during the American Revolution, designed the first American coin, the ''Continental'' penny;

(6) Franklin made ''A Penny Saved is A Penny Earned'' a household phrase to describe the American virtues of hard work and economical living;

(7) Franklin played a major role in the design of the Great Seal of the United States, which appears on the $1 bill, and other major American symbols;

(8) Before 1979, Benjamin Franklin was the only non-president of the United States whose image graced circulating coin and paper currency;

(9) the official United States half dollar from 1948–1963 showed Franklin's portrait, as designed by John Sinnock;

(10) Franklin's ''Way to Wealth'' has come to symbolize America's commitment to free enterprise;

(11) the Franklin Institute Science Museum in Philadelphia (in this Act referred to as the ''Franklin Institute'') is a museum with an interactive approach to science and technology dedicated to the work of Benjamin Franklin;

(12) the Franklin Institute houses the first steam printing machine for coinage used by the United States Mint, which was placed in service in 1836, the 130th anniversary year of Franklin's birth;

(13) in 1976, Franklin Hall in the Franklin Institute was named the Official National Monument to the great patriot, scientist, and inventor;

(14) the Franklin Institute and 4 other major Benjamin Franklin-related Philadelphia cultural institutions joined hands in 2000 to organize international programs to commemorate the forthcoming 300th anniversary of Franklin's birth in 2006; and

(15) in 2002, Congress passed the Benjamin Franklin Tercentenary Commission Act (Public Law 107–202), creating a panel of distinguished Americans to work with the private sector in recommending appropriate Tercentenary programs, with the Franklin Institute serving as its administrative secretariat.

SEC. 3. COIN SPECIFICATIONS.

(a) DENOMINATIONS.—The Secretary of the Treasury (in this Act referred to as the ''Secretary'') shall mint and issue the following coins:

(1) $1 SILVER COINS WITH YOUNGER FRANKLIN IMAGE ON OBVERSE.—Not more than 250,000 $1 coins bearing the designs specified in section 4(a)(2), each of which shall—

(A) weigh 26.73 grams;

(B) have a diameter of 1.500 inches; and

(C) contain 90 percent silver and 10 percent copper.

(2) $1 SILVER COINS WITH OLDER FRANKLIN IMAGE ON OBVERSE.—Not more than 250,000 $1 coins bearing the designs specified in section 4(a)(3), each of which shall—

(A) weigh 26.73 grams;

(B) have a diameter of 1.500 inches; and

(C) contain 90 percent silver and 10 percent copper.

(b) LEGAL TENDER.—The coins minted under this Act shall be legal tender, as provided in section 5103 of title 31, United States Code.

(c) NUMISMATIC ITEMS.—For purposes of section 5136 of title 31, United States Code, all coins minted under this Act shall be considered to be numismatic items.

(d) USE OF THE UNITED STATES MINT AT PHILADELPHIA, PENNSYLVANIA.—It is the sense of the Congress that the coins minted under this Act should be struck at the United States Mint at Philadelphia, Pennsylvania, to the greatest extent possible.

SEC. 4. DESIGN OF COINS.

(a) DESIGN REQUIREMENTS.—

(1) IN GENERAL.—The design of the coins minted under this Act shall be emblematic of the life and legacy of Benjamin Franklin.

(2) $1 COINS WITH YOUNGER FRANKLIN IMAGE.—

(A) OBVERSE.—The obverse of the coins minted under section 3(a)(1) shall bear the image of Benjamin Franklin as a young man.

(B) REVERSE.—The reverse of the coins minted under section 3(a)(1) shall bear an image related to Benjamin Franklin's role as a patriot and a statesman.

(3) $1 COINS WITH OLDER FRANKLIN IMAGE.—

(A) OBVERSE.—The obverse of the coins minted under section 3(a)(2) shall bear the image of Benjamin Franklin as an older man.

(B) REVERSE.—The reverse of the coins minted under section 3(a)(2) shall bear an image related to Benjamin Franklin's role in developing the early coins and currency of the new country.

(4) DESIGNATION AND INSCRIPTIONS.—On each coin minted under this Act, there shall be—

(A) a designation of the value of the coin;

(B) an inscription of the year ''2006''; and

(C) inscriptions of the words ''Liberty'', ''In God We Trust'', ''United States of America'', and ''E Pluribus Unum''.

(b) SELECTION.—The design for the coins minted under this Act shall be—

(1) selected by the Secretary after consultation with the Commission of Fine Arts; and

(2) reviewed by the Citizens Coin Advisory Committee established under section 5135 of title 31, United States Code.

SEC. 5. ISSUANCE OF COINS.

(a) QUALITY OF COINS.—Coins minted under this Act shall be issued in uncirculated and proof qualities.

(b) COMMENCEMENT OF ISSUANCE.—The Secretary may issue coins minted under this Act beginning January 1, 2006, except that the Secretary may initiate sales of such coins, without issuance, before such date.

(c) TERMINATION OF MINTING AUTHORITY.—No coins shall be minted under this Act after December 31, 2006.

SEC. 6. SALE OF COINS.

(a) SALE PRICE.—Notwithstanding any other provision of law, the coins issued under this Act shall be sold by the Secretary at a price equal to the face value, plus the cost of designing and issuing such coins (including labor, materials, dies, use of machinery, overhead expenses, and marketing).

(b) BULK SALES.—The Secretary shall make bulk sales of the coins issued under this Act at a reasonable discount.

(c) PREPAID ORDERS AT A DISCOUNT.—

(1) IN GENERAL.—The Secretary shall accept prepaid orders for the coins minted under this Act before the issuance of such coins.

(2) DISCOUNT.—Sale prices with respect to prepaid orders under paragraph (1) shall be at a reasonable discount.

(d) SALES OF SINGLE COINS AND SETS OF COINS.—Coins of each design specified under section 4 may be sold separately or as a set containing a coin of each such design.

SEC. 7. SURCHARGES.

(a) SURCHARGE REQUIRED.—All sales of coins minted under this Act shall include a surcharge of $10 per coin.

(b) DISTRIBUTION.—Subject to section 5134(f) of title 31, United States Code, all surcharges which are received by the Secretary

from the sale of coins issued under this Act shall be promptly paid by the Secretary to the Franklin Institute, for purposes of the celebration of the Benjamin Franklin Tercentenary.

(c) AUDITS.—The Franklin Institute shall be subject to the audit requirements of section 5134(f)(2) of title 31, United States Code, for purposes of this Act.

By Ms. SNOWE:

S. 2569. A bill to amend section 227 of the Communications Act of 1934 to clarify the prohibition on junk fax transmissions; to the Committee on Commerce, Science, and Transportation.

Mr. SNOWE. Mr. President, I rise today to introduce the Junk Fax Prevention Act of 2004, a bill to strengthen our laws on protecting consumers and businesses from receiving unwanted commercial advertisements by facsimile, while at the same time preserving a key method of doing business for thousands of companies, large and small, across the United States. The sending of unsolicited commercial communications by facsimile—''junk faxes''—has been illegal since 1991, and the Federal Communications Commission is charged with enforcing that prohibition. Those who engage in ''blast faxes'' can and should be prosecuted to the full extent of the law, as their behavior imposes unreasonable expenses upon residential and business facsimile subscribers.

However, the FCC has long recognized an exception to this general ban on unsolicited faxes when the parties sending and receiving the fax have an established business relationship. Businesses of all shapes and sizes regularly conduct their transactions via facsimile, such as real estate agents, wholesalers and distributors, travel agents, and those in the convention industry. In our modern economy, companies that are often hundreds or thousands of miles away from each other do business together, often with the same or greater frequency as with those just up the street. And the reality of business is that sometimes you need to communicate in writing, and it needs to get there right away.

The established business relationship exemption recognized this reality, and ensured that government was not placing an undue hardship on business owners. Yet inexplicably, on June 26, 2003 the FCC issued a new rule that eliminated the established business relationship. Under this new rule—which is set to take effect on January 1, 2005—the sender of a fax would have to acquire, in writing, the permission of the recipient to receive an unsolicited fax before the fax could be sent, even if the recipient made a verbal request that the information be faxed.

As Chair of the Senate Small Business Committee, I can state that the business community has in unison called upon Congress to take action to rectify this situation. Industry groups estimate that it will cost businesses an average of $5,000 in the first year alone to comply with the new law, and as much as $3,000 each year thereafter in record-keeping costs. These numbers do not take into account the potential lost business that could easily result if a primary method of business-to-business communication is cut off. Quite simply, small businesses in particular will suffer significantly if these rules are allowed to take effect.

My bill will restore the established business relationship exemption, allowing standard business transactions to continue without inhibition. The term ''Established business relationship'' means the same thing in the Junk Fax Prevention Act as in the regulations governing the Federal Do-Not-Call Registry: it means that the fax subscriber either made an inquiry of the sender within the prior three months or a purchase from the sender within the prior 18 months.

The Junk Fax Prevention Act also strengthens the protections available to fax recipients by adding an opt-out provision that the current law does not have. Even if an established business relationship exists, a fax subscriber can still request to not receive unsolicited faxes. The senders of these faxes must, by law, honor these requests, and they must include a notification of this right on every fax they send.

As a strong supporter of consumer rights, I also want to assure my colleagues that this bill does not in any way place consumers at risk. Very few consumers own fax machines, and those who do are protected by the general ban on solicitation and the opt-out provision if they do have an existing business relationship. To ensure that the privacy of consumers and businesses is protected, my bill also provides for studies by both the General Accounting Office and the FCC to evaluate the effectiveness of enforcement.

Small businesses have weathered the storm of the economic downturn over the past several years. As our economy now climbs out of recession and people return back to work, American businesses—our nation's employers do not need these unnecessary economic restraints to further hinder their recovery. I call upon all of my colleagues to join me in bringing relief to American businesses and pass the Junk Fax Prevention Act.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2569

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Junk Fax Prevention Act of 2004''.

SEC. 2. PROHIBITION ON FAX TRANSMISSIONS CONTAINING UNSOLICITED ADVERTISEMENTS.

(a) PROHIBITION.—Subparagraph (C) of section 227(b)(1) of the Communications Act of 1934 (47 U.S.C. 227(b)(1)(C)) is amended to read as follows:

''(C) to use any telephone facsimile machine, computer, or other device to send, to a telephone facsimile machine, an unsolicited advertisement—

''(i) to a person who has made a request to such sender that complies with the requirements under paragraph (2)(D), not to send future unsolicited advertisements to a telephone facsimile machine; or

''(ii) to a person not described in clause (i), unless—

''(I) the sender has an established business relationship (which term, for purposes of this subclause, shall have the meaning given the term in section 64.1200 of the Commission's regulations, as in effect on January 1, 2003, except that such term shall apply to a business subscriber in the same manner in which it applies to a residential subscriber) with such person; and

''(II) the unsolicited advertisement contains a conspicuous notice on the first page of the unsolicited advertisement that—

''(aa) states that the recipient may make a request to the sender of the unsolicited advertisement not to send any future unsolicited advertisements to such telephone facsimile machine and that failure to comply, within the shortest reasonable time, as determined by the Commission, with such a request meeting the requirements under paragraph (2)(D) is unlawful;

''(bb) sets forth the requirements for a request under paragraph (2)(D); and

''(cc) includes a domestic contact telephone and facsimile number for the recipient to transmit such a request to the sender, neither of which may be a number for a pay-per-call service (as such term is defined in section 228(i)); any number supplied shall permit an individual or business to make a do-not-fax request during regular business hours; or''.

(b) REQUEST TO OPT-OUT OF FUTURE UNSOLICITED ADVERTISEMENTS.—Paragraph (2) of section 227(b) of the Communications Act of 1934 (47 U.S.C. 227(b)(2)) is amended—

(1) in subparagraph (B), by striking ''and'' at the end;

(2) in subparagraph (C), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following new subparagraphs:

''(D) shall provide, by rule, that a request not to send future unsolicited advertisements to a telephone facsimile machine complies with the requirements under this subparagraph only if—

''(i) the request identifies the telephone number of the telephone facsimile machine to which the request relates;

''(ii) the request is made to the telephone or facsimile number of the sender of such an unsolicited advertisement provided pursuant to paragraph (1)(C)(ii)(II)(cc) or by any other method of communication as determined by the Commission; and

''(iii) the person making the request has not, subsequent to such request, provided express invitation or permission to the sender, in writing or otherwise, to send such advertisements to such person at such telephone facsimile machine; and

''(E) may, in the discretion of the Commission and subject to such conditions as the Commission may prescribe, allow professional trade associations that are tax-exempt nonprofit organizations to send unsolicited advertisements to their members in furtherance of the association's tax-exempt purpose that do not contain the notice required by paragraph (1)(C)(ii)(II), except that the Commission may take action under this subparagraph only by regulation issued after notice and opportunity for public comment

in accordance with section 553 of title 5, United States Code, and only if the Commission determines that such notice is not necessary to protect the right of the members of such trade associations to make a request to their trade associations not to send any future unsolicited advertisements.''.

(c) UNSOLICITED ADVERTISEMENT.—Paragraph (4) of section 227(a) of the Communications Act of 1934 (47 U.S.C. 227(a)(4)) is amended by inserting '', in writing or otherwise'' before the period at the end.

(d) REGULATIONS.—Not later than 270 days after the date of the enactment of this Act, the Federal Communications Commission shall issue regulations to implement the amendments made by this section.

SEC. 3. FCC ANNUAL REPORT REGARDING JUNK FAX ENFORCEMENT.

Section 227 of the Communications Act of 1934 (47 U. S.C. 227) is amended by adding at the end the following new subsection:

''(g) JUNK FAX ENFORCEMENT REPORT.—The Commission shall submit a report to the Congress for each year regarding the enforcement of the provisions of this section relating to sending of unsolicited advertisements to telephone facsimile machines, which shall include the following information:

''(1) The number of complaints received by the Commission during such year alleging that a consumer received an unsolicited advertisement via telephone facsimile machine in violation of the Commission's rules.

''(2) The number of such complaints received during the year on which the Commission has taken action.

''(3) The number of such complaints that remain pending at the end of the year.

''(4) The number of citations issued by the Commission pursuant to section 503 during the year to enforce any law, regulation, or policy relating to sending of unsolicited advertisements to telephone facsimile machines.

''(5) The number of notices of apparent liability issued by the Commission pursuant to section 503 during the year to enforce any law, regulation, or policy relating to sending of unsolicited advertisements to telephone facsimile machines.

''(6) For each such notice—

''(A) the amount of the proposed forfeiture penalty involved;

''(B) the person to whom the notice was issued;

''(C) the length of time between the date on which the complaint was filed and the date on which the notice was issued; and

''(D) the status of the proceeding.

''(7) The number of final orders imposing forfeiture penalties issued pursuant to section 503 during the year to enforce any law, regulation, or policy relating to sending of unsolicited advertisements to telephone facsimile machines.

''(8) For each such forfeiture order—

''(A) the amount of the penalty imposed by the order;

''(B) the person to whom the order was issued;

''(C) whether the forfeiture penalty has been paid; and

''(D) the amount paid.

''(9) For each case in which a person has failed to pay a forfeiture penalty imposed by such a final order, whether the Commission referred such matter to the Attorney General for recovery of the penalty.

''(10) For each case in which the Commission referred such an order to the Attorney General—

''(A) the number of days from the date the Commission issued such order to the date of such referral;

''(B) whether the Attorney General has commenced an action to recover the penalty, and if so, the number of days from the date the Commission referred such order to the Attorney General to the date of such commencement; and

''(C) whether the recovery action resulted in collection of any amount, and if so, the amount collected.''.

SEC. 4. GAO STUDY OF JUNK FAX ENFORCEMENT.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study regarding complaints received by the Federal Communications Commission concerning unsolicited advertisements sent to telephone facsimile machines, which shall determine—

(1) the number and nature of such complaints;

(2) the number of such complaints that result in final agency actions by the Commission;

(3) the length of time taken by the Commission in responding to such complaints;

(4) the mechanisms established by the Commission to receive, investigate, and respond to such complaints;

(5) the level of enforcement success achieved by the Commission and the Attorney General regarding such complaints;

(6) whether complainants to the Commission are adequately informed by the Commission of the responses to their complaints; and

(7) whether additional enforcement measures are necessary to protect consumers, including recommendations regarding such additional enforcement measures.

(b) ADDITIONAL ENFORCEMENT REMEDIES.—In conducting the analysis and making the recommendations required under paragraph (7) of subsection (a), the Comptroller General shall specifically examine—

(1) the adequacy of existing statutory enforcement actions available to the Commission;

(2) the adequacy of existing statutory enforcement actions and remedies available to consumers;

(3) the impact of existing statutory enforcement remedies on senders of facsimiles;

(4) whether increasing the amount of financial penalties is warranted to achieve greater deterrent effect; and

(5) whether establishing penalties and enforcement actions for repeat violators or abusive violations similar to those established by section 4 of the CAN–SPAM Act of 2003 (15 U.S.C. 7703) would have a greater deterrent effect.

(c) REPORT.—Not later than 270 days after the date of the enactment of this Act, the Comptroller General shall submit a report on the results of the study under this section to Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 389—EXPRESSING THE SENSE OF THE SENATE WITH RESPECT TO PROSTATE CANCER INFORMATION

Mr. CAMPBELL (for himself, Mr. JOHNSON, Mr. BUNNING, Mr. CHAMBLISS, Mr. GRAHAM of South Carolina, Mr. BURNS, and Mrs. LINCOLN) submitted the following resolution; which was referred to the Committee on Health, Education, Labor and Pensions:

S. RES. 389

Whereas in 2004, it is estimated that approximately 230,000 new cases of prostate cancer will be diagnosed in the United States, and nearly 30,000 men in the United States will die from prostate cancer;

Whereas prostate cancer is the second leading cause of cancer death in men in the United States;

Whereas more than $4,700,000,000 is spent annually in the United States in direct treatment costs for prostate cancer;

Whereas African-American men are diagnosed with and die from prostate cancer more frequently than men of other ethnic backgrounds;

Whereas increased education among health care providers and patients regarding the need for prostate cancer screening tests has resulted in the diagnosis of approximately 86 percent of prostate cancer patients before the cancerous cells have spread appreciably beyond the prostate gland, thereby enhancing the odds of successful treatment;

Whereas the potential complication rates for significant side effects vary among the most common forms of treatment for prostate cancer;

Whereas prostate cancer often strikes elderly people in the United States, men should have an opportunity to learn about the benefits and limitations of testing for prostate cancer detection and of treatment of prostate cancer, so that they can make an informed decision with the assistance of a clinician; and

Whereas Congress as a whole, and Members of Congress as individuals, are in unique positions to support the fight against prostate cancer, to help raise public awareness about the need to make screening tests available to all people at risk for prostate cancer, and to provide prostate cancer patients with adequate information to assess the relative benefits and risks of treatment options: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) national and community organizations and health care providers have played a commendable role in supplying information concerning the importance of screening for prostate cancer and the treatment options for patients with prostate cancer; and

(2) the Federal Government and the States should ensure that health care providers supply prostate cancer patients with appropriate information and any other tools necessary for prostate cancer patients to receive readily understandable descriptions of the advantages, disadvantages, benefits, and risks of all medically efficacious screening and treatments for prostate cancer, including brachytherapy, hormonal treatments, external beam radiation, chemotherapy, surgery, and watchful waiting.

Mr. CAMPBELL. Mr. President, today I am pleased to be joined by my colleagues Senators JOHNSON, BUNNING, CHAMBLISS, LINDSEY GRAHAM, BURNS, and LINCOLN to submit legislation which would express the Sense of the Senate that physicians inform prostate cancer patients of all of their treatment options. The non-binding resolution which we are introducing stresses the importance of presenting all options to men diagnosed with prostate cancer.

Prostate cancer is the second leading cause of cancer death of men in this country and is particularly devastating for men over the age of 50. In 2004, it is estimated that approximately 230,000 new cases of prostate cancer will be diagnosed in the United States, and nearly 30,000 men will die from the disease. Clearly, the effort to raise public understanding about treatment options is crucial.

I believe that patients should be provided with accessible and comprehensive information about all available treatment options in an effort to enable them to select the therapy most appropriate for their unique conditions. Understanding both the cure rates and the quality of life implications of each approach is essential in making an educated decision.

Last week an identical resolution passed the House by a vote of 377–3. I urge my colleagues to support this legislation. Let's take an important step forward in the fight against prostate cancer.

SENATE RESOLUTION 390—DESIGNATING SEPTEMBER 9, 2004, AS ''NATIONAL FETAL ALCOHOL SPECTRUM DISORDERS DAY''

Ms. MURKOWSKI (for herself and Mr. DASCHLE) submitted the following resolution; which was considered and agreed to:

S. RES. 390

Whereas the term ''fetal alcohol spectrum disorders'' has replaced fetal alcohol syndrome as the umbrella term describing the range of effects that can occur in an individual whose mother drank alcohol during pregnancy;

Whereas fetal alcohol spectrum disorders are the leading cause of mental retardation in western civilization, including the United States, and are 100 percent preventable;

Whereas fetal alcohol spectrum disorders are a major cause of numerous social disorders including learning disabilities, school failure, juvenile delinquency, homelessness, unemployment, mental illness, and crime;

Whereas the incidence rate of fetal alcohol syndrome is estimated at 1 out of 500 live births and of fetal alcohol spectrum disorders is estimated at 1 out of every 100 live births;

Whereas the economic cost of fetal alcohol syndrome alone to the Nation was $5,400,000,000 in 2003 and that each individual with fetal alcohol syndrome will cost United States taxpayers between an estimated $1,500,000 and $3,000,000 in his or her lifetime;

Whereas in February 1999, a small group of parents of children who suffer from fetal alcohol spectrum disorders came together with the hope that in 1 magic moment the world could be made aware of the devastating consequences of alcohol consumption during pregnancy;

Whereas the first International Fetal Alcohol Syndrome Awareness Day was observed on September 9, 1999;

Whereas Bonnie Buxton of Toronto, Canada, the co-founder of the first International Fetal Alcohol Syndrome Awareness Day, stated the purpose of the observance as: ''What if . . . a world full of FAS/E parents all got together on the ninth hour of the ninth day of the ninth month of the year and asked the world to remember that during the 9 months of pregnancy a woman should not consume alcohol . . . would the rest of the world listen?''; and

Whereas on the ninth day of the ninth month of each year since 1999, communities around the world have observed International Fetal Alcohol Syndrome Awareness Day: Now, therefore, be it

Resolved, That the Senate—

(1) designates September 9, 2004, as ''National Fetal Alcohol Spectrum Disorders Awareness Day''; and

(2) requests that the President issue a proclamation calling upon the people of the United States to—

(A) observe ''National Fetal Alcohol Spectrum Disorders Awareness Day'' with appropriate ceremonies to—

(i) promote awareness of the effects of prenatal exposure to alcohol;

(ii) increase compassion for individuals affected by prenatal exposure to alcohol;

(iii) minimize further effects; and

(iv) ensure healthier communities across the United States; and

(B) observe a moment of reflection on the ninth hour of September 9, 2004, to remember that during the 9 months of pregnancy a woman should not consume alcohol.

AMENDMENTS SUBMITTED & PROPOSED

SA 3474. Mr. CRAPO (for Mr. COCHRAN (for himself and Mr. HARKIN)) proposed an amendment to the bill S. 2507, to amend the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966 to provide children with increased access to food and nutrition assistance, to simplify program operations and improve program management, to reauthorize child nutrition programs, and for other purposes.

SA 3475. Mr. WARNER (for Mr. GREGG) proposed an amendment to amendment SA 3400 proposed by Mr. FEINGOLD (for himself, Mrs. MURRAY, Mr. CORZINE, and Mr. DAYTON) to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes.

SA 3476. Mr. WARNER proposed an amendment to the bill S. 2400, supra.

SA 3477. Mr. WARNER submitted an amendment intended to be proposed by him to the bill S. 2400, supra.

SA 3478. Mr. WARNER proposed an amendment to the bill S. 2400, supra.

SA 3479. Mr. WARNER proposed an amendment to the bill S. 2400, supra.

SA 3480. Mr. WARNER proposed an amendment to the bill S. 2400, supra.

SA 3481. Mr. WARNER proposed an amendment to the bill S. 2400, supra.

SA 3482. Mr. WARNER (for himself and Mr. LEVIN) proposed an amendment to the bill S. 2400, supra.

SA 3483. Mr. LEVIN (for Mr. HOLLINGS) proposed an amendment to the bill S. 2400, supra.

SA 3484. Mr. WARNER proposed an amendment to the bill S. 2400, supra.

SA 3485. Mr. LEAHY (for himself, Mr. CORZINE, Mr. KENNEDY, Mr. SCHUMER, and Mr. DURBIN) proposed an amendment to amendment SA 3387 proposed by Mr. LEAHY to the bill S. 2400, supra.

TEXT OF AMENDMENTS

SA 3474. Mr. CRAPO (for Mr. COCHRAN (for himself and Mr. HARKIN)) proposed an amendment to the bill S. 2507, to amend the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966 to provide children with increased access to food and nutrition assistance, to simplify program operations and improve program management, to reauthorize child nutrition programs, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Child Nutrition and WIC Reauthorization Act of 2004''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

TITLE I—AMENDMENTS TO RICHARD B. RUSSELL NATIONAL SCHOOL LUNCH ACT

SEC. 101. NUTRITION PROMOTION.

The Richard B. Russell National School Lunch Act is amended by inserting after section 4 (42 U.S.C. 1753) the following:

''SEC. 5. NUTRITION PROMOTION.

''(a) IN GENERAL.—Subject to the availability of funds made available under subsection (g), the Secretary shall make payments to State agencies for each fiscal year,

in accordance with this section, to promote nutrition in food service programs under this Act and the school breakfast program established under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

''(b) TOTAL AMOUNT FOR EACH FISCAL YEAR.—The total amount of funds available for a fiscal year for payments under this section shall equal not more than the product obtained by multiplying—

''(1) ½ cent; by

''(2) the number of lunches reimbursed through food service programs under this Act during the second preceding fiscal year in schools, institutions, and service institutions that participate in the food service programs.

''(c) PAYMENTS TO STATES.—

''(1) ALLOCATION.—Subject to paragraph (2), from the amount of funds available under subsection (g) for a fiscal year, the Secretary shall allocate to each State agency an amount equal to the greater of—

''(A) a uniform base amount established by the Secretary; or

''(B) an amount determined by the Secretary, based on the ratio that—

''(i) the number of lunches reimbursed through food service programs under this Act in schools, institutions, and service institutions in the State that participate in the food service programs; bears to

''(ii) the number of lunches reimbursed through the food service programs in schools, institutions, and service institutions in all States that participate in the food service programs.

''(2) REDUCTIONS.—The Secretary shall reduce allocations to State agencies qualifying for an allocation under paragraph (1)(B), in a manner determined by the Secretary, to the extent necessary to ensure that the total amount of funds allocated under paragraph (1) is not greater than the amount appropriated under subsection (g).

''(d) USE OF PAYMENTS.—

''(1) USE BY STATE AGENCIES.—A State agency may reserve, to support dissemination and use of nutrition messages and material developed by the Secretary, up to—

''(A) 5 percent of the payment received by the State for a fiscal year under subsection (c); or

''(B) in the case of a small State (as determined by the Secretary), a higher percentage (as determined by the Secretary) of the payment.

''(2) DISBURSEMENT TO SCHOOLS AND INSTITUTIONS.—Subject to paragraph (3), the State agency shall disburse any remaining amount of the payment to school food authorities and institutions participating in food service programs described in subsection (a) to disseminate and use nutrition messages and material developed by the Secretary.

''(3) SUMMER FOOD SERVICE PROGRAM FOR CHILDREN.—In addition to any amounts reserved under paragraph (1), in the case of the summer food service program for children established under section 13, the State agency may—

''(A) retain a portion of the funds made available under subsection (c) (as determined by the Secretary); and

''(B) use the funds, in connection with the program, to disseminate and use nutrition messages and material developed by the Secretary.

''(e) DOCUMENTATION.—A State agency, school food authority, and institution receiving funds under this section shall maintain documentation of nutrition promotion activities conducted under this section.

''(f) REALLOCATION.—The Secretary may reallocate, to carry out this section, any amounts made available to carry out this section that are not obligated or expended, as determined by the Secretary.

''(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section, to remain available until expended.''.

SEC. 102. NUTRITION REQUIREMENTS.

Section 9(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(a)) is amended by striking paragraph (2) and inserting the following:

''(2) FLUID MILK.—

''(A) IN GENERAL.—Lunches served by schools participating in the school lunch program under this Act—

''(i) shall offer students fluid milk in a variety of fat contents;

''(ii) may offer students flavored and unflavored fluid milk and lactose-free fluid milk; and

''(iii) shall provide a substitute for fluid milk for students whose disability restricts their diet, on receipt of a written statement from a licensed physician that identifies the disability that restricts the student's diet and that specifies the substitute for fluid milk.

''(B) SUBSTITUTES.—

''(i) STANDARDS FOR SUBSTITUTION.—A school may substitute for the fluid milk provided under subparagraph (A), a nondairy beverage that is nutritionally equivalent to fluid milk and meets nutritional standards established by the Secretary (which shall, among other requirements to be determined by the Secretary, include fortification of calcium, protein, vitamin A, and vitamin D to levels found in cow's milk) for students who cannot consume fluid milk because of a medical or other special dietary need other than a disability described in subparagraph (A)(iii).

''(ii) NOTICE.—The substitutions may be made if the school notifies the State agency that the school is implementing a variation allowed under this subparagraph, and if the substitution is requested by written statement of a medical authority or by a student's parent or legal guardian that identifies the medical or other special dietary need that restricts the student's diet, except that the school shall not be required to provide beverages other than beverages the school has identified as acceptable substitutes.

''(iii) EXCESS EXPENSES BORNE BY SCHOOL FOOD AUTHORITY.—Expenses incurred in providing substitutions under this subparagraph that are in excess of expenses covered by reimbursements under this Act shall be paid by the school food authority.

''(C) RESTRICTIONS ON SALE OF MILK PROHIBITED.—A school that participates in the school lunch program under this Act shall not directly or indirectly restrict the sale or marketing of fluid milk products by the school (or by a person approved by the school) at any time or any place—

''(i) on the school premises; or

''(ii) at any school-sponsored event.''.

SEC. 103. PROVISION OF INFORMATION.

Section 9(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(a)) is amended by adding at the end the following:

''(4) PROVISION OF INFORMATION.—

''(A) GUIDANCE.—Prior to the beginning of the school year beginning July 2004, the Secretary shall issue guidance to States and school food authorities to increase the consumption of foods and food ingredients that are recommended for increased serving consumption in the most recent Dietary Guidelines for Americans published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341).

''(B) RULES.—Not later than 2 years after the date of enactment of this paragraph, the Secretary shall promulgate rules, based on the most recent Dietary Guidelines for Americans, that reflect specific recommendations, expressed in serving recommendations, for increased consumption of foods and food ingredients offered in school nutrition programs under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).''.

SEC. 104. DIRECT CERTIFICATION.

(a) IN GENERAL.—Section 9(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)) is amended—

(1) by redesignating paragraphs (3) through (7) as paragraphs (9) through (13), respectively; and

(2) in paragraph (2)—

(A) in subparagraph (B)—

(i) by striking ''(B) Applications'' and inserting the following:

''(B) APPLICATIONS AND DESCRIPTIVE MATERIAL.—

''(i) IN GENERAL.—Applications'';

(ii) in the second sentence, by striking ''Such forms and descriptive material'' and inserting the following:

''(ii) INCOME ELIGIBILITY GUIDELINES.—Forms and descriptive material distributed in accordance with clause (i)''; and

(iii) by adding at the end the following:

''(iii) CONTENTS OF DESCRIPTIVE MATERIAL.—

''(I) IN GENERAL.—Descriptive material distributed in accordance with clause (i) shall contain a notification that—

''(aa) participants in the programs listed in subclause (II) may be eligible for free or reduced price meals; and

''(bb) documentation may be requested for verification of eligibility for free or reduced price meals.

''(II) PROGRAMS.—The programs referred to in subclause (I)(aa) are—

''(aa) the special supplemental nutrition program for women, infants, and children established by section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786);

''(bb) the food stamp program established under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.);

''(cc) the food distribution program on Indian reservations established under section 4(b) of the Food Stamp Act of 1977 (7 U.S.C. 2013(b)); and

''(dd) a State program funded under the program of block grants to States for temporary assistance for needy families established under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.).'';

(B) by striking ''(C)(i)'' and inserting ''(3)''; and

(C) by striking clause (ii) of subparagraph (C) (as it existed before the amendment made by subparagraph (B)) and all that follows through the end of subparagraph (D) and inserting the following:

''(4) DIRECT CERTIFICATION FOR CHILDREN IN FOOD STAMP HOUSEHOLDS.—

''(A) IN GENERAL.—Subject to subparagraph (D), each State agency shall enter into an agreement with the State agency conducting eligibility determinations for the food stamp program established under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.).

''(B) PROCEDURES.—Subject to paragraph (6), the agreement shall establish procedures under which a child who is a member of a household receiving assistance under the food stamp program shall be certified as eligible for free lunches under this Act and free breakfasts under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), without further application.

''(C) CERTIFICATION.—Subject to paragraph (6), under the agreement, the local educational agency conducting eligibility determinations for a school lunch program under this Act and a school breakfast program under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) shall certify a child who

is a member of a household receiving assistance under the food stamp program as eligible for free lunches under this Act and free breakfasts under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), without further application.

''(D) APPLICABILITY.—This paragraph applies to—

''(i) in the case of the school year beginning July 2006, a school district that had an enrollment of 25,000 students or more in the preceding school year;

''(ii) in the case of the school year beginning July 2007, a school district that had an enrollment of 10,000 students or more in the preceding school year; and

''(iii) in the case of the school year beginning July 2008 and each subsequent school year, each local educational agency.''.

(b) ADMINISTRATION.—

(1) IN GENERAL.—Section 9(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)) (as amended by subsection (a)) is amended by inserting after paragraph (4) the following:

''(5) DISCRETIONARY CERTIFICATION.—

''(A) IN GENERAL.—Subject to paragraph (6), any local educational agency may certify any child as eligible for free lunches or breakfasts, without further application, by directly communicating with the appropriate State or local agency to obtain documentation of the status of the child as—

''(i) a member of a family that is receiving assistance under the temporary assistance for needy families program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995;

''(ii) a homeless child or youth (defined as 1 of the individuals described in section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2));

''(iii) served by the runaway and homeless youth grant program established under the Runaway and Homeless Youth Act (42 U.S.C. 5701 et seq.); or

''(iv) a migratory child (as defined in section 1309 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6399)).''.

''(B) CHILDREN OF HOUSEHOLDS RECEIVING FOOD STAMPS.—Subject to paragraph (6), any local educational agency may certify any child as eligible for free lunches or breakfasts, without further application, by directly communicating with the appropriate State or local agency to obtain documentation of the status of the child as a member of a household that is receiving food stamps under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.).

''(6) USE OR DISCLOSURE OF INFORMATION.—

''(A) IN GENERAL.—The use or disclosure of any information obtained from an application for free or reduced price meals, or from a State or local agency referred to in paragraph (3)(F), (4), or (5), shall be limited to—

''(i) a person directly connected with the administration or enforcement of this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) (including a regulation promulgated under either Act);

''(ii) a person directly connected with the administration or enforcement of—

''(I) a Federal education program;

''(II) a State health or education program administered by the State or local educational agency (other than a program carried out under title XIX or XXI of the Social Security Act (42 U.S.C. 1396 et seq.; 42 U.S.C. 1397aa et seq.)); or

''(III) a Federal, State, or local means-tested nutrition program with eligibility standards comparable to the school lunch program under this Act;

''(iii)(I) the Comptroller General of the United States for audit and examination authorized by any other provision of law; and

''(II) notwithstanding any other provision of law, a Federal, State, or local law enforcement official for the purpose of investigating an alleged violation of any program covered by this paragraph or paragraph (3)(F), (4), or (5);

''(iv) a person directly connected with the administration of the State medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) or the State children's health insurance program under title XXI of that Act (42 U.S.C. 1397aa et seq.) solely for the purposes of—

''(I) identifying children eligible for benefits under, and enrolling children in, those programs, except that this subclause shall apply only to the extent that the State and the local educational agency or school food authority so elect; and

''(II) verifying the eligibility of children for programs under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.); and

''(v) a third party contractor described in paragraph (3)(G)(iv).

''(B) LIMITATION ON INFORMATION PROVIDED.—Information provided under clause (ii) or (v) of subparagraph (A) shall be limited to the income eligibility status of the child for whom application for free or reduced price meal benefits is made or for whom eligibility information is provided under paragraph (3)(F), (4), or (5), unless the consent of the parent or guardian of the child for whom application for benefits was made is obtained.

''(C) CRIMINAL PENALTY.—A person described in subparagraph (A) who publishes, divulges, discloses, or makes known in any manner, or to any extent not authorized by Federal law (including a regulation), any information obtained under this subsection shall be fined not more than $1,000 or imprisoned not more than 1 year, or both.

''(D) REQUIREMENTS FOR WAIVER OF CONFIDENTIALITY.—A State that elects to exercise the option described in subparagraph (A)(iv)(I) shall ensure that any local educational agency or school food authority acting in accordance with that option—

''(i) has a written agreement with 1 or more State or local agencies administering health programs for children under titles XIX and XXI of the Social Security Act (42 U.S.C. 1396 et seq. and 1397aa et seq.) that requires the health agencies to use the information obtained under subparagraph (A) to seek to enroll children in those health programs; and

''(ii)(I) notifies each household, the information of which shall be disclosed under subparagraph (A), that the information disclosed will be used only to enroll children in health programs referred to in subparagraph (A)(iv); and

''(II) provides each parent or guardian of a child in the household with an opportunity to elect not to have the information disclosed.

''(E) USE OF DISCLOSED INFORMATION.—A person to which information is disclosed under subparagraph (A)(iv)(I) shall use or disclose the information only as necessary for the purpose of enrolling children in health programs referred to in subparagraph (A)(iv).

''(7) FREE AND REDUCED PRICE POLICY STATEMENT.—

''(A) IN GENERAL.—After the initial submission, a local educational agency shall not be required to submit a free and reduced price policy statement to a State educational agency under this Act unless there is a substantive change in the free and reduced price policy of the local educational agency.

''(B) ROUTINE CHANGE.—A routine change in the policy of a local educational agency (such as an annual adjustment of the income eligibility guidelines for free and reduced price meals) shall not be sufficient cause for requiring the local educational agency to submit a policy statement.

''(8) COMMUNICATIONS.—

''(A) IN GENERAL.—Any communication with a household under this subsection or subsection (d) shall be in an understandable and uniform format and, to the maximum extent practicable, in a language that parents and legal guardians can understand.

''(B) ELECTRONIC AVAILABILITY.—In addition to the distribution of applications and descriptive material in paper form as provided for in this paragraph, the applications and material may be made available electronically via the Internet.''.

(2) AGREEMENT FOR DIRECT CERTIFICATION AND COOPERATION.—Section 11 of the Food Stamp Act of 1977 (7 U.S.C. 2020) is amended by adding at the end the following:

''(u) AGREEMENT FOR DIRECT CERTIFICATION AND COOPERATION.—

''(1) IN GENERAL.—Each State agency shall enter into an agreement with the State agency administering the school lunch program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.).

''(2) CONTENTS.—The agreement shall establish procedures that ensure that—

''(A) any child receiving benefits under this Act shall be certified as eligible for free lunches under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) and free breakfasts under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), without further application; and

''(B) each State agency shall cooperate in carrying out paragraphs (3)(F) and (4) of section 9(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)).''.

(c) FUNDING.—

(1) IN GENERAL.—On October 1, 2005, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to assist States in carrying out the amendments contained in this section and the provisions of section 9(b)(3) of the Richard B. Russell National School Lunch Act (as amended by section 105(a)) $9,000,000, to remain available until expended.

(2) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to assist States in carrying out the amendments made by this section and the provisions of section 9(b)(3) of the Richard B. Russell National School Lunch Act (as amended by section 105(a)) the funds transferred under paragraph (1), without further appropriation.

(d) CONFORMING AMENDMENTS.—

(1) Effective July 1, 2008, paragraph (5) of section 9(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)) (as added by subsection (b)(1)) is amended—

(A) by striking subparagraph (B);

(B) by striking ''CERTIFICATION.—'' and all that follows through ''IN GENERAL.—'' and inserting ''CERTIFICATION.—''; and

(C) by redesignating clauses (i) through (iv) as subparagraphs (A) through (D), respectively, and indenting appropriately.

(2) Section 9 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758) (as amended by subsection (a)(1)) is amended—

(A) in subsection (b)(12)(B), by striking ''paragraph (2)(C)'' and inserting ''this subsection''; and

(B) in the second sentence of subsection (d)(1), by striking ''subsection (b)(2)(C)'' and inserting ''subsection (b)(3)(G)''.

(3) Section 11(e) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1759a(e)) is amended in the first sentence by striking ''section 9(b)(3)'' and inserting ''section 9(b)(9)''.

SEC. 105. HOUSEHOLD APPLICATIONS.

(a) IN GENERAL.—Section 9(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)) (as amended by section 104(a)(2)(B)) is amended by striking paragraph (3) and inserting the following:

''(3) HOUSEHOLD APPLICATIONS.—

''(A) DEFINITION OF HOUSEHOLD APPLICATION.—In this paragraph, the term 'household application' means an application for a child of a household to receive free or reduced price school lunches under this Act, or free or reduced price school breakfasts under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), for which an eligibility determination is made other than under paragraph (4) or (5).

''(B) ELIGIBILITY DETERMINATION.—

''(i) IN GENERAL.—An eligibility determination shall be made on the basis of a complete household application executed by an adult member of the household or in accordance with guidance issued by the Secretary.

''(ii) ELECTRONIC SIGNATURES AND APPLICATIONS.—A household application may be executed using an electronic signature if—

''(I) the application is submitted electronically; and

''(II) the electronic application filing system meets confidentiality standards established by the Secretary.

''(C) CHILDREN IN HOUSEHOLD.—

''(i) IN GENERAL.—The household application shall identify the names of each child in the household for whom meal benefits are requested.

''(ii) SEPARATE APPLICATIONS.—A State educational agency or local educational agency may not request a separate application for each child in the household that attends schools under the same local educational agency.

''(D) VERIFICATION OF SAMPLE.—

''(i) DEFINITIONS.—In this subparagraph:

''(I) ERROR PRONE APPLICATION.—The term 'error prone application' means an approved household application that—

''(aa) indicates monthly income that is within $100, or an annual income that is within $1,200, of the income eligibility limitation for free or reduced price meals; or

''(bb) in lieu of the criteria established under item (aa), meets criteria established by the Secretary.

''(II) NON-RESPONSE RATE.—The term 'nonresponse rate' means (in accordance with guidelines established by the Secretary) the percentage of approved household applications for which verification information has not been obtained by a local educational agency after attempted verification under subparagraphs (F) and (G).

''(ii) VERIFICATION OF SAMPLE.—Each school year, a local educational agency shall verify eligibility of the children in a sample of household applications approved for the school year by the local educational agency, as determined by the Secretary in accordance with this subsection.

''(iii) SAMPLE SIZE.—Except as otherwise provided in this paragraph, the sample for a local educational agency for a school year shall equal the lesser of—

''(I) 3 percent of all applications approved by the local educational agency for the school year, as of October 1 of the school year, selected from error prone applications; or

''(II) 3,000 error prone applications approved by the local educational agency for the school year, as of October 1 of the school year.

''(iv) ALTERNATIVE SAMPLE SIZE.—

''(I) IN GENERAL.—If the conditions described in subclause (IV) are met, the verification sample size for a local educational agency shall be the sample size described in subclause (II) or (III), as determined by the local educational agency.

''(II) 3,000/3 PERCENT OPTION.—The sample size described in this subclause shall be the lesser of 3,000, or 3 percent of, applications selected at random from applications approved by the local educational agency for the school year, as of October 1 of the school year.

''(III) 1,000/1 PERCENT PLUS OPTION.—

''(aa) IN GENERAL.—The sample size described in this subclause shall be the sum of—

''(AA) the lesser of 1,000, or 1 percent of, all applications approved by the local educational agency for the school year, as of October 1 of the school year, selected from error prone applications; and

''(BB) the lesser of 500, or ½ of 1 percent of, applications approved by the local educational agency for the school year, as of October 1 of the school year, that provide a case number (in lieu of income information) showing participation in a program described in item (bb) selected from those approved applications that provide a case number (in lieu of income information) verifying the participation.

''(bb) PROGRAMS.—The programs described in this item are—

''(AA) the food stamp program established under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.);

''(BB) the food distribution program on Indian reservations established under section 4(b) of the Food Stamp Act of 1977 (7 U.S.C. 2013(b)); and

''(CC) a State program funded under the program of block grants to States for temporary assistance for needy families established under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995.

''(IV) CONDITIONS.—The conditions referred to in subclause (I) shall be met for a local educational agency for a school year if—

''(aa) the nonresponse rate for the local educational agency for the preceding school year is less than 20 percent; or

''(bb) the local educational agency has more than 20,000 children approved by application by the local educational agency as eligible for free or reduced price meals for the school year, as of October 1 of the school year, and—

''(AA) the nonresponse rate for the preceding school year is at least 10 percent below the nonresponse rate for the second preceding school year; or

''(BB) in the case of the school year beginning July 2005, the local educational agency attempts to verify all approved household applications selected for verification through use of public agency records from at least 2 of the programs or sources of information described in subparagraph (F)(i).

''(v) ADDITIONAL SELECTED APPLICATIONS.—A sample for a local educational agency for a school year under clauses (iii) and (iv)(III)(AA) shall include the number of additional randomly selected approved household applications that are required to comply with the sample size requirements in those clauses.

''(E) PRELIMINARY REVIEW.—

''(i) REVIEW FOR ACCURACY.—

''(I) IN GENERAL.—Prior to conducting any other verification activity for approved household applications selected for verification, the local educational agency shall ensure that the initial eligibility determination for each approved household application is reviewed for accuracy by an individual other than the individual making the initial eligibility determination, unless otherwise determined by the Secretary.

''(II) WAIVER.—The requirements of subclause (I) shall be waived for a local educational agency if the local educational agency is using a technology-based solution that demonstrates a high level of accuracy, to the satisfaction of the Secretary, in processing an initial eligibility determination in accordance with the income eligibility guidelines of the school lunch program.

''(ii) CORRECT ELIGIBILITY DETERMINATION.—If the review indicates that the initial eligibility determination is correct, the local educational agency shall verify the approved household application.

''(iii) INCORRECT ELIGIBILITY DETERMINATION.—If the review indicates that the initial eligibility determination is incorrect, the local educational agency shall (as determined by the Secretary)—

''(I) correct the eligibility status of the household;

''(II) notify the household of the change;

''(III) in any case in which the review indicates that the household is not eligible for free or reduced-price meals, notify the household of the reason for the ineligibility and that the household may reapply with income documentation for free or reduced-price meals; and

''(IV) in any case in which the review indicates that the household is eligible for free or reduced-price meals, verify the approved household application.

''(F) DIRECT VERIFICATION.—

''(i) IN GENERAL.—Subject to clauses (ii) and (iii), to verify eligibility for free or reduced price meals for approved household applications selected for verification, the local educational agency may (in accordance with criteria established by the Secretary) first obtain and use income and program participation information from a public agency administering—

''(I) the food stamp program established under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.);

''(II) the food distribution program on Indian reservations established under section 4(b) of the Food Stamp Act of 1977 (7 U.S.C. 2013(b));

''(III) the temporary assistance for needy families program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.);

''(IV) the State medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.); or

''(V) a similar income-tested program or other source of information, as determined by the Secretary.

''(ii) FREE MEALS.—Public agency records that may be obtained and used under clause (i) to verify eligibility for free meals for approved household applications selected for verification shall include the most recent available information (other than information reflecting program participation or income before the 180-day period ending on the date of application for free meals) that is relied on to administer—

''(I) a program or source of information described in clause (i) (other than clause (i)(IV)); or

''(II) the State plan for medical assistance under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) in—

''(aa) a State in which the income eligibility limit applied under section 1902(l)(2)(C) of that Act (42 U.S.C. 1396a(*l*)(2)(C)) is not more than 133 percent of the official poverty

line described in section 1902(l)(2)(A) of that Act (42 U.S.C. 1396a(*l*)(2)(A)); or

''(bb) a State that otherwise identifies households that have income that is not more than 133 percent of the official poverty line described in section 1902(l)(2)(A) of that Act (42 U.S.C. 1396a(*l*)(2)(A)).

''(iii) REDUCED PRICE MEALS.—Public agency records that may be obtained and used under clause (i) to verify eligibility for reduced price meals for approved household applications selected for verification shall include the most recent available information (other than information reflecting program participation or income before the 180-day period ending on the date of application for reduced price meals) that is relied on to administer—

''(I) a program or source of information described in clause (i) (other than clause (i)(IV)); or

''(II) the State plan for medical assistance under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) in—

''(aa) a State in which the income eligibility limit applied under section 1902(l)(2)(C) of that Act (42 U.S.C. 1396a(*l*)(2)(C)) is not more than 185 percent of the official poverty line described in section 1902(l)(2)(A) of that Act (42 U.S.C. 1396a(*l*)(2)(A)); or

''(bb) a State that otherwise identifies households that have income that is not more than 185 percent of the official poverty line described in section 1902(l)(2)(A) of that Act (42 U.S.C. 1396a(*l*)(2)(A)).

''(iv) EVALUATION.—Not later than 3 years after the date of enactment of this subparagraph, the Secretary shall complete an evaluation of—

''(I) the effectiveness of direct verification carried out under this subparagraph in decreasing the portion of the verification sample that must be verified under subparagraph (G) while ensuring that adequate verification information is obtained; and

''(II) the feasibility of direct verification by State agencies and local educational agencies.

''(v) EXPANDED USE OF DIRECT VERIFICATION.—If the Secretary determines that direct verification significantly decreases the portion of the verification sample that must be verified under subparagraph (G), while ensuring that adequate verification information is obtained, and can be conducted by most State agencies and local educational agencies, the Secretary may require a State agency or local educational agency to implement direct verification through 1 or more of the programs described in clause (i), as determined by the Secretary, unless the State agency or local educational agency demonstrates (under criteria established by the Secretary) that the State agency or local educational agency lacks the capacity to conduct, or is unable to implement, direct verification.

''(G) HOUSEHOLD VERIFICATION.—

''(i) IN GENERAL.—If an approved household application is not verified through the use of public agency records, a local educational agency shall provide to the household written notice that—

''(I) the approved household application has been selected for verification; and

''(II) the household is required to submit verification information to confirm eligibility for free or reduced price meals.

''(ii) PHONE NUMBER.—The written notice in clause (i) shall include a toll-free phone number that parents and legal guardians in households selected for verification can call for assistance with the verification process.

''(iii) FOLLOWUP ACTIVITIES.—If a household does not respond to a verification request, a local educational agency shall make at least 1 attempt to obtain the necessary verification from the household in accordance with guidelines and regulations promulgated by the Secretary.

''(iv) CONTRACT AUTHORITY FOR SCHOOL FOOD AUTHORITIES.—A local educational agency may contract (under standards established by the Secretary) with a third party to assist the local educational agency in carrying out clause (iii).

''(H) VERIFICATION DEADLINE.—

''(i) GENERAL DEADLINE.—

''(I) IN GENERAL.—Subject to subclause (II), not later than November 15 of each school year, a local educational agency shall complete the verification activities required for the school year (including followup activities).

''(II) EXTENSION.—Under criteria established by the Secretary, a State may extend the deadline established under subclause (I) for a school year for a local educational agency to December 15 of the school year.

''(ii) ELIGIBILITY CHANGES.—Based on the verification activities, the local educational agency shall make appropriate modifications to the eligibility determinations made for household applications in accordance with criteria established by the Secretary.

''(I) LOCAL CONDITIONS.—In the case of a natural disaster, civil disorder, strike, or other local condition (as determined by the Secretary), the Secretary may substitute alternatives for—

''(i) the sample size and sample selection criteria established under subparagraph (D); and

''(ii) the verification deadline established under subparagraph (H).

''(J) INDIVIDUAL REVIEW.—In accordance with criteria established by the Secretary, the local educational agency may, on individual review—

''(i) decline to verify no more than 5 percent of approved household applications selected under subparagraph (D); and

''(ii) replace the approved household applications with other approved household applications to be verified.

''(K) FEASIBILITY STUDY.—

''(i) IN GENERAL.—The Secretary shall conduct a study of the feasibility of using computer technology (including data mining) to reduce—

''(I) overcertification errors in the school lunch program under this Act;

''(II) waste, fraud, and abuse in connection with this paragraph; and

''(III) errors, waste, fraud, and abuse in other nutrition programs, as determined to be appropriate by the Secretary.

''(ii) REPORT.—Not later than 180 days after the date of enactment of this paragraph, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing—

''(I) the results of the feasibility study conducted under this subsection;

''(II) how a computer system using technology described in clause (i) could be implemented;

''(III) a plan for implementation; and

''(IV) proposed legislation, if necessary, to implement the system.''.

(b) CONFORMING AMENDMENTS.—Section 1902(a)(7) of the Social Security Act (42 U.S.C. 1396a(a)(7)) is amended—

(1) by striking ''connected with the'' and inserting ''connected with—

''(A) the'';

(2) by adding ''and'' after the semicolon; and

(3) by adding at the end the following:

''(B) at State option, the exchange of information necessary to verify the certification of eligibility of children for free or reduced price breakfasts under the Child Nutrition Act of 1966 and free or reduced price lunches under the Richard B. Russell National School Lunch Act, in accordance with section 9(b) of that Act, using data standards and formats established by the State agency;''.

(c) EVALUATION FUNDING.—

(1) IN GENERAL.—On October 1, 2005, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to conduct the evaluation required by section 9(b)(3)(F)(iv) of the Richard B. Russell National School Lunch Act (as amended by subsection (a)) $2,000,000, to remain available until expended.

(2) RECEIPT AND ACCEPTANCE.—The Secretary of Agriculture shall be entitled to receive, shall accept, and shall use to carry out this section the funds transferred under paragraph (1), without further appropriation.

SEC. 106. DURATION OF ELIGIBILITY FOR FREE OR REDUCED PRICE MEALS.

Paragraph (9) of section 9(b) of the Richard B. Russell National School Lunch Act (42 U.S.C.1758(b)) (as redesignated by section 104(a)(1)) is amended—

(1) by striking ''(9) Any'' and inserting the following:

''(9) ELIGIBILITY FOR FREE AND REDUCED PRICE LUNCHES.—

''(A) FREE LUNCHES.—Any'';

(2) by striking ''Any'' in the second sentence and inserting the following:

''(B) REDUCED PRICE LUNCHES.—

''(i) IN GENERAL.—Any'';

(3) by striking ''The'' in the last sentence and inserting the following:

''(ii) MAXIMUM PRICE.—The''; and

(4) by adding at the end the following:

''(C) DURATION.—Except as otherwise specified in paragraph (3)(E), (3)(H)(ii), and section 11(a), eligibility for free or reduced price meals for any school year shall remain in effect—

''(i) beginning on the date of eligibility approval for the current school year; and

''(ii) ending on a date during the subsequent school year determined by the Secretary.''.

SEC. 107. RUNAWAY, HOMELESS, AND MIGRANT YOUTH.

(a) CATEGORICAL ELIGIBILITY FOR FREE LUNCHES AND BREAKFASTS.—Section 9(b)(12)(A) of the Richard B. Russell National School Lunch Act (as redesignated by section 104(a)(1) of this Act) is amended—

(1) in clause (ii), by striking ''or'' at the end;

(2) in clause (iii), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

''(iv) a homeless child or youth (defined as 1 of the individuals described in section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2));

''(v) served by the runaway and homeless youth grant program established under the Runaway and Homeless Youth Act (42 U.S.C. 5701 et seq.); or

''(vi) a migratory child (as defined in section 1309 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6399)).''.

(b) DOCUMENTATION.—Section 9(d)(2) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(d)(2)) is amended—

(1) in subparagraph (B), by striking ''or'';

(2) in subparagraph (C), by striking the period at the end and inserting a semicolon; and

(3) by inserting after subparagraph (C) the following:

''(D) documentation has been provided to the appropriate local educational agency showing that the child meets the criteria specified in clauses (iv) or (v) of subsection (b)(12)(A); or

''(E) documentation has been provided to the appropriate local educational agency

showing the status of the child as a migratory child (as defined in section 1309 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6399)).''.

SEC. 108. CERTIFICATION BY LOCAL EDUCATIONAL AGENCIES.

(a) CERTIFICATION BY LOCAL EDUCATIONAL AGENCY.—Section 9 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758) is amended—

(1) in the second sentence of subsection (b)(11) (as redesignated by section 104(a)(1)), by striking ''Local school authorities'' and inserting ''Local educational agencies''; and

(2) in subsection (d)(2)—

(A) by striking ''local school food authority'' each place it appears and inserting ''local educational agency''; and

(B) in subparagraph (A), by striking ''such authority'' and inserting ''the local educational agency''.

(b) DEFINITION OF LOCAL EDUCATIONAL AGENCY.—Section 12(d) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(d)) is amended—

(1) by redesignating paragraph (8) as paragraph (3) and moving the paragraph to appear after paragraph (2);

(2) by redesignating paragraphs (3) through (7) (as those paragraphs existed before the amendment made by paragraph (1)) as paragraphs (5) through (9), respectively; and

(3) by inserting after paragraph (3) (as redesignated by paragraph (1)) the following:

''(4) LOCAL EDUCATIONAL AGENCY.—

''(A) IN GENERAL.—The term 'local educational agency' has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

''(B) INCLUSION.—The term 'local educational agency' includes, in the case of a private nonprofit school, an appropriate entity determined by the Secretary.''.

(c) SCHOOL BREAKFAST PROGRAM.—Section 4(b)(1)(E)) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(b)(1)(E)) is amended by striking ''school food authority'' each place it appears and inserting ''local educational agency''.

SEC. 109. EXCLUSION OF MILITARY HOUSING ALLOWANCES.

Section 9(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)) (as amended by section 104(a)(1)) is amended in paragraph (13) by striking ''For each of fiscal years 2002 and 2003 and through June 30, 2004, the'' and inserting ''The''.

SEC. 110. WAIVER OF REQUIREMENT FOR WEIGHTED AVERAGES FOR NUTRIENT ANALYSIS.

Section 9(f)(5) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(f)(5)) is amended by striking ''September 30, 2003'' and inserting ''September 30, 2009''.

SEC. 111. FOOD SAFETY.

Section 9(h) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(h)) is amended—

(1) in the subsection heading, by striking ''INSPECTIONS'';

(2) in paragraph (1)—

(A) by striking ''Except as provided in paragraph (2), a'' and inserting ''A'';

(B) by striking ''shall, at least once'' and inserting: ''shall—

''(A) at least twice'';

(C) by striking the period at the end and inserting a semicolon; and

(D) by adding at the end the following:

''(B) post in a publicly visible location a report on the most recent inspection conducted under subparagraph (A); and

''(C) on request, provide a copy of the report to a member of the public.''; and

(3) by striking paragraph (2) and inserting the following:

''(2) STATE AND LOCAL GOVERNMENT INSPECTIONS.—Nothing in paragraph (1) prevents any State or local government from adopting or enforcing any requirement for more frequent food safety inspections of schools.

''(3) AUDITS AND REPORTS BY STATES.—For each of fiscal years 2006 through 2009, each State shall annually—

''(A) audit food safety inspections of schools conducted under paragraphs (1) and (2); and

''(B) submit to the Secretary a report of the results of the audit.

''(4) AUDIT BY THE SECRETARY.—For each of fiscal years 2006 through 2009, the Secretary shall annually audit State reports of food safety inspections of schools submitted under paragraph (3).

''(5) SCHOOL FOOD SAFETY PROGRAM.—Each school food authority shall implement a school food safety program, in the preparation and service of each meal served to children, that complies with any hazard analysis and critical control point system established by the Secretary.''.

SEC. 112. PURCHASES OF LOCALLY PRODUCED FOODS.

Section 9(j)(2)(A) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(j)(2)(A)) is amended by striking ''2007'' and inserting ''2009''.

SEC. 113. SPECIAL ASSISTANCE.

Section 11(a)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1759a(a)(1)) is amended by inserting ''or school district'' after ''school'' each place it appears in subparagraphs (C) through (E) (other than as part of ''school year'', ''school years'', ''school lunch'', ''school breakfast'', and ''4-school-year period'').

SEC. 114. FOOD AND NUTRITION PROJECTS INTEGRATED WITH ELEMENTARY SCHOOL CURRICULA.

Section 12 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760) is amended by striking subsection (m).

SEC. 115. PROCUREMENT TRAINING.

Section 12 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760) (as amended by section 114) is amended by inserting after subsection (l) the following:

''(m) PROCUREMENT TRAINING.—

''(1) IN GENERAL.—Subject to the availability of funds made available under paragraph (4), the Secretary shall provide technical assistance and training to States, State agencies, schools, and school food authorities in the procurement of goods and services for programs under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) (other than section 17 of that Act (42 U.S.C. 1786)).

''(2) BUY AMERICAN TRAINING.—Activities carried out under paragraph (1) shall include technical assistance and training to ensure compliance with subsection (n).

''(3) PROCURING SAFE FOODS.—Activities carried out under paragraph (1) shall include technical assistance and training on procuring safe foods, including the use of model specifications for procuring safe foods.

''(4) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $1,000,000 for each of fiscal years 2005 through 2009, to remain available until expended.''.

SEC. 116. SUMMER FOOD SERVICE PROGRAM FOR CHILDREN.

(a) SEAMLESS SUMMER OPTION.—Section 13(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(a)) is amended by adding at the end the following:

''(8) SEAMLESS SUMMER OPTION.—Except as otherwise determined by the Secretary, a service institution that is a public or private nonprofit school food authority may provide summer or school vacation food service in accordance with applicable provisions of law governing the school lunch program established under this Act or the school breakfast program established under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).''.

(b) SEAMLESS SUMMER REIMBURSEMENTS.—Section 13(b)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(b)(1)) is amended by adding at the end the following:

''(D) SEAMLESS SUMMER REIMBURSEMENTS.—A service institution described in subsection (a)(8) shall be reimbursed for meals and meal supplements in accordance with the applicable provisions under this Act (other than subparagraphs (A), (B), and (C) of this paragraph and paragraph (4)) and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), as determined by the Secretary.''.

(c) SUMMER FOOD SERVICE ELIGIBILITY CRITERIA.—Section 13(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(a)) (as amended by subsection (a)) is amended by adding at the end the following—

''(9) EXEMPTION.—

''(A) IN GENERAL.—For each of calendar years 2005 and 2006 in rural areas of the State of Pennsylvania (as determined by the Secretary), the threshold for determining 'areas in which poor economic conditions exist' under paragraph (1)(C) shall be 40 percent.

''(B) EVALUATION.—

''(i) IN GENERAL.—The Secretary, acting through the Administrator of the Food and Nutrition Service, shall evaluate the impact of the eligibility criteria described in subparagraph (A) as compared to the eligibility criteria described in paragraph (1)(C).

''(ii) IMPACT.—The evaluation shall assess the impact of the threshold in subparagraph (A) on—

''(I) the number of sponsors offering meals through the summer food service program;

''(II) the number of sites offering meals through the summer food service program;

''(III) the geographic location of the sites;

''(IV) services provided to eligible children; and

''(V) other factors determined by the Secretary.

''(iii) REPORT.—Not later than January 1, 2008, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the results of the evaluation under this subparagraph.

''(iv) FUNDING.—

''(I) IN GENERAL.—On January 1, 2005, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to carry out this subparagraph $400,000, to remain available until expended.

''(II) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this subparagraph the funds transferred under subclause (I), without further appropriation.''.

(d) SUMMER FOOD SERVICE RURAL TRANSPORTATION.—Section 13(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(a)) (as amended by subsection (c)) is amended by adding at the end the following:

''(10) SUMMER FOOD SERVICE RURAL TRANSPORTATION.—

''(A) IN GENERAL.—The Secretary shall provide grants, through not more than 5 eligible State agencies selected by the Secretary, to not more than 60 eligible service institutions selected by the Secretary to increase participation at congregate feeding sites in the summer food service program for children authorized by this section through innovative approaches to limited transportation in rural areas.

''(B) ELIGIBILITY.—To be eligible to receive a grant under this paragraph—

''(i) a State agency shall submit an application to the Secretary, in such manner as the Secretary shall establish, and meet criteria established by the Secretary; and

''(ii) a service institution shall agree to the terms and conditions of the grant, as established by the Secretary.

''(C) DURATION.—A service institution that receives a grant under this paragraph may use the grant funds during the 3-fiscal year period beginning in fiscal year 2005.

''(D) REPORTS.—The Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate—

''(i) not later than January 1, 2007, an interim report that describes—

''(I) the use of funds made available under this paragraph; and

''(II) any progress made by using funds from each grant provided under this paragraph; and

''(ii) not later than January 1, 2008, a final report that describes—

''(I) the use of funds made available under this paragraph;

''(II) any progress made by using funds from each grant provided under this paragraph;

''(III) the impact of this paragraph on participation in the summer food service program for children authorized by this section; and

''(IV) any recommendations by the Secretary concerning the activities of the service institutions receiving grants under this paragraph.

''(E) FUNDING.—

''(i) IN GENERAL.—Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to carry out this paragraph—

''(I) on October 1, 2005, $2,000,000; and

''(II) on October 1, 2006, and October 1, 2007, $1,000,000.

''(ii) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this paragraph the funds transferred under clause (i), without further appropriation.

''(iii) AVAILABILITY OF FUNDS.—Funds transferred under clause (i) shall remain available until expended.

''(iv) REALLOCATION.—The Secretary may reallocate any amounts made available to carry out this paragraph that are not obligated or expended, as determined by the Secretary.''.

(e) REAUTHORIZATION.—Section 13(q) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(q)) is amended by striking ''June 30, 2004'' and inserting ''September 30, 2009''.

(f) SIMPLIFIED SUMMER FOOD PROGRAMS.—

(1) DEFINITION OF ELIGIBLE STATE.—Section 18(f) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769(f)) is amended by striking paragraph (1) and inserting the following:

''(1) DEFINITION OF ELIGIBLE STATE.—In this subsection, the term 'eligible State' means—

''(A) a State participating in the program under this subsection as of May 1, 2004; and

''(B) a State in which (based on data available in April 2004)—

''(i) the percentage obtained by dividing—

''(I) the sum of—

''(aa) the average daily number of children attending the summer food service program in the State in July 2003; and

''(bb) the average daily number of children receiving free or reduced price meals under the school lunch program in the State in July 2003; by

''(II) the average daily number of children receiving free or reduced price meals under the school lunch program in the State in March 2003; is less than

''(ii) 66.67 percent of the percentage obtained by dividing—

''(I) the sum of—

''(aa) the average daily number of children attending the summer food service program in all States in July 2003; and

''(bb) the average daily number of children receiving free or reduced price meals under the school lunch program in all States in July 2003; by

''(II) the average daily number of children receiving free or reduced price meals under the school lunch program in all States in March 2003.''.

(2) DURATION.—Section 18(f)(2) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769(f)(2)) is amended by striking ''During the period beginning October 1, 2000, and ending June 30, 2004, the'' and inserting ''The''.

(3) PRIVATE NONPROFIT ORGANIZATIONS.—Section 18(f)(3) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769(f)(3)) is amended in subparagraphs (A) and (B) by striking ''(other than a service institution described in section 13(a)(7))'' both places it appears.

(4) REPORT.—Section 18(f) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769(f)) is amended by striking paragraph (6) and inserting the following:

''(6) REPORT.—Not later than April 30, 2007, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that includes—

''(A) the evaluations completed by the Secretary under paragraph (5); and

''(B) any recommendations of the Secretary concerning the programs.''.

(5) CONFORMING AMENDMENTS.—Section 18(f) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769(f)) is amended—

(A) by striking the subsection heading and inserting the following:

''(f) SIMPLIFIED SUMMER FOOD PROGRAMS.—'';

(B) in paragraph (2)—

(i) by striking the paragraph heading and inserting the following:

''(2) PROGRAMS.—''; and

(ii) by striking ''pilot project'' and inserting ''program'';

(C) in subparagraph (A) and (B) of paragraph (3), by striking ''pilot project'' both places it appears and inserting ''program''; and

(D) in paragraph (5)—

(i) in the paragraph heading by striking ''PILOT PROJECTS'' and inserting ''PROGRAMS''; and

(ii) by striking ''pilot project'' each place it appears and inserting ''program''.

SEC. 117. COMMODITY DISTRIBUTION PROGRAM.

Section 14(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1762a(a)) is amended by striking '', during the period beginning July 1, 1974, and ending June 30, 2004,''.

SEC. 118. NOTICE OF IRRADIATED FOOD PRODUCTS.

Section 14 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1762a) is amended by adding at the end the following:

''(h) NOTICE OF IRRADIATED FOOD PRODUCTS.—

''(1) IN GENERAL.—The Secretary shall develop a policy and establish procedures for the purchase and distribution of irradiated food products in school meals programs under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

''(2) MINIMUM REQUIREMENTS.—The policy and procedures shall ensure, at a minimum, that—

''(A) irradiated food products are made available only at the request of States and school food authorities;

''(B) reimbursements to schools for irradiated food products are equal to reimbursements to schools for food products that are not irradiated;

''(C) States and school food authorities are provided factual information on the science and evidence regarding irradiation technology, including—

''(i) notice that irradiation is not a substitute for safe food handling techniques; and

''(ii) any other similar information determined by the Secretary to be necessary to promote food safety in school meals programs;

''(D) States and school food authorities are provided model procedures for providing to school food authorities, parents, and students—

''(i) factual information on the science and evidence regarding irradiation technology; and

''(ii) any other similar information determined by the Secretary to be necessary to promote food safety in school meals;

''(E) irradiated food products distributed to the Federal school meals program under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) are labeled with a symbol or other printed notice that—

''(i) indicates that the product was irradiated; and

''(ii) is prominently displayed in a clear and understandable format on the container;

''(F) irradiated food products are not commingled in containers with food products that are not irradiated; and

''(G) schools that offer irradiated food products are encouraged to offer alternatives to irradiated food products as part of the meal plan used by the schools.''.

SEC. 119. CHILD AND ADULT CARE FOOD PROGRAM.

(a) DEFINITION OF INSTITUTION.—

(1) IN GENERAL.—Section 17(a)(2)(B)(i) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(a)(2)(B)(i)) is amended by striking ''during'' and all that follows through ''2004,''.

(2) CONFORMING AMENDMENT.—Section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766) is amended by striking subsection (p).

(b) DURATION OF DETERMINATION AS TIER I FAMILY OR GROUP DAY CARE HOME.—Section 17(f)(3)(E)(iii) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(f)(3)(E)(iii)) is amended by striking ''3 years'' and inserting ''5 years''.

(c) AUDITS.—Section 17(i) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(i)) is amended by striking ''(i) The'' and inserting the following:

''(i) AUDITS.—

''(1) DISREGARDS.—

''(A) IN GENERAL.—Subject to subparagraph (B), in conducting management evaluations, reviews, or audits under this section, the Secretary or a State agency may disregard any overpayment to an institution for a fiscal year if the total overpayment to the institution for the fiscal year does not exceed an amount that is consistent with the disregards allowed in other programs under this Act and recognizes the cost of collecting small claims, as determined by the Secretary.

''(B) CRIMINAL OR FRAUD VIOLATIONS.—In carrying out this paragraph, the Secretary and a State agency shall not disregard any overpayment for which there is evidence of a violation of a criminal law or civil fraud law.

''(2) FUNDING.—The''.

(d) DURATION OF AGREEMENTS.—Section 17(j) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(j)) is amended—

(1) by striking ''(j) The'' and inserting the following:

''(j) AGREEMENTS.—

''(1) IN GENERAL.—The''; and

(2) by adding at the end the following:

''(2) DURATION.—An agreement under paragraph (1) shall remain in effect until terminated by either party to the agreement.''.

(e) RURAL AREA ELIGIBILITY DETERMINATION FOR DAY CARE HOMES.—Section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766) (as amended by subsection (a)(2)) is amended by inserting after subsection (o) the following:

''(p) RURAL AREA ELIGIBILITY DETERMINATION FOR DAY CARE HOMES.—

''(1) DEFINITION OF SELECTED TIER I FAMILY OR GROUP DAY CARE HOME.—In this subsection, the term 'selected tier I family or group day care home' means a family or group day home that meets the definition of tier I family or group day care home under subclause (I) of subsection (f)(3)(A)(ii) except that items (aa) and (bb) of that subclause shall be applied by substituting '40 percent' for '50 percent'.

''(2) ELIGIBILITY.—For each of fiscal years 2006 and 2007, in rural areas of the State of Nebraska (as determined by the Secretary), the Secretary shall provide reimbursement to selected tier I family or group day care homes (as defined in paragraph (1)) under subsection (f)(3) in the same manner as tier I family or group day care homes (as defined in subsection (f)(3)(A)(ii)(I)).

''(3) EVALUATION.—

''(A) IN GENERAL.—The Secretary, acting through the Administrator of the Food and Nutrition Service, shall evaluate the impact of the eligibility criteria described in paragraph (2) as compared to the eligibility criteria described in subsection (f)(3)(A)(ii)(I).

''(B) IMPACT.—The evaluation shall assess the impact of the change in eligibility requirements on—

''(i) the number of family or group day care homes offering meals under this section;

''(ii) the number of family or group day care homes offering meals under this section that are defined as tier I family or group day care homes as a result of paragraph (1) that otherwise would be defined as tier II family or group day care homes under subsection (f)(3)(A)(iii);

''(iii) the geographic location of the family or group day care homes;

''(iv) services provided to eligible children; and

''(v) other factors determined by the Secretary.

''(C) REPORT.—Not later than March 31, 2008, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the results of the evaluation under this subsection.

''(D) FUNDING.—

''(i) IN GENERAL.—On October 1, 2005, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to carry out this paragraph $400,000, to remain available until expended.

''(ii) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this paragraph the funds transferred under clause (i), without further appropriation.''.

(f) MANAGEMENT SUPPORT.—Section 17(q)(3) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(q)(3)) is amended by striking ''1999 through 2003'' and inserting ''2005 and 2006''.

(g) AGE LIMITS.—Section 17(t)(5)(A)(i) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(t)(5)(A)(i) is amended—

(1) in subclause (I)—

(A) by striking ''12'' and inserting ''18''; and

(B) by inserting ''or'' after the semicolon;

(2) by striking subclause (II); and

(3) by redesignating subclause (III) as subclause (II).

(h) TECHNICAL AMENDMENTS.—Section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766) is amended—

(1) in subsection (a)(6)(B), by inserting ''and adult'' after ''child''; and

(2) in subsection (t)(3), by striking ''subsection (a)(1)'' and inserting ''subsection (a)(5)''.

(i) PAPERWORK REDUCTION.—The Secretary of Agriculture, in conjunction with States and participating institutions, shall examine the feasibility of reducing paperwork resulting from regulations and recordkeeping requirements for State agencies, family child care homes, child care centers, and sponsoring organizations participating in the child and adult care food program established under section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766).

(j) EARLY CHILD NUTRITION EDUCATION.—

(1) IN GENERAL.—Subject to the availability of funds made available under paragraph (6), for a period of 4 successive years, the Secretary of Agriculture shall award to 1 or more entities with expertise in designing and implementing health education programs for limited-English-proficient individuals 1 or more grants to enhance obesity prevention activities for child care centers and sponsoring organizations providing services to limited-English-proficient individuals through the child and adult care food program under section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766) in each of 4 States selected by the Secretary in accordance with paragraph (2).

(2) STATES.—The Secretary shall provide grants under this subsection in States that have experienced a growth in the limited-English-proficient population of the States of at least 100 percent between the years 1990 and 2000, as measured by the census.

(3) REQUIRED ACTIVITIES.—Activities carried out under paragraph (1) shall include—

(A) developing an interactive and comprehensive tool kit for use by lay health educators and training activities;

(B) conducting training and providing ongoing technical assistance for lay health educators; and

(C) establishing collaborations with child care centers and sponsoring organizations participating in the child and adult care food program under section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766) to—

(i) identify limited-English-proficient children and families; and

(ii) enhance the capacity of the child care centers and sponsoring organizations to use appropriate obesity prevention strategies.

(4) EVALUATION.—Each grant recipient shall identify an institution of higher education to conduct an independent evaluation of the effectiveness of the grant.

(5) REPORT.—The Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry and the Committee on Health, Education, Labor, and Pensions, of the Senate a report that includes—

(A) the evaluation completed by the institution of higher education under paragraph (4);

(B) the effectiveness of lay health educators in reducing childhood obesity; and

(C) any recommendations of the Secretary concerning the grants.

(6) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection $250,000 for each of fiscal years 2005 through 2009.

SEC. 120. FRESH FRUIT AND VEGETABLE PROGRAM.

Section 18 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769) is amended by striking subsection (g) and inserting the following:

''(g) FRESH FRUIT AND VEGETABLE PROGRAM.—

''(1) IN GENERAL.—For the school year beginning July 2004 and each subsequent school year, the Secretary shall carry out a program to make free fresh fruits and vegetables available, to the maximum extent practicable, to—

''(A) 25 elementary or secondary schools in each of the 4 States authorized to participate in the program under this subsection on May 1, 2004;

''(B) 25 elementary or secondary schools (as selected by the Secretary in accordance with paragraph (3)) in each of 4 States (including a State for which funds were allocated under the program described in paragraph (3)(B)(ii)) that are not participating in the program under this subsection on May 1, 2004; and

''(C) 25 elementary or secondary schools operated on 3 Indian reservations (including the reservation authorized to participate in the program under this subsection on May 1, 2004), as selected by the Secretary.

''(2) PROGRAM.—A school participating in the program shall make free fresh fruits and vegetables available to students throughout the school day in 1 or more areas designated by the school.

''(3) SELECTION OF SCHOOLS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), in selecting additional schools to participate in the program under paragraph (1)(B), the Secretary shall—

''(i) to the maximum extent practicable, ensure that the majority of schools selected are those in which not less than 50 percent of students are eligible for free or reduced price meals under this Act;

''(ii) solicit applications from interested schools that include—

''(I) information pertaining to the percentage of students enrolled in the school submitting the application who are eligible for free or reduced price school lunches under this Act;

''(II) a certification of support for participation in the program signed by the school food manager, the school principal, and the district superintendent (or equivalent positions, as determined by the school); and

''(III) such other information as may be requested by the Secretary;

''(iii) for each application received, determine whether the application is from a school in which not less than 50 percent of students are eligible for free or reduced price meals under this Act; and

''(iv) give priority to schools that submit a plan for implementation of the program that includes a partnership with 1 or more entities that provide non-Federal resources (including entities representing the fruit and vegetable industry) for—

''(I) the acquisition, handling, promotion, or distribution of fresh and dried fruits and fresh vegetables; or

''(II) other support that contributes to the purposes of the program.

''(B) NONAPPLICABILITY TO EXISTING PARTICIPANTS.—Subparagraph (A) shall not apply to a school, State, or Indian reservation authorized—

''(i) to participate in the program on May 1, 2004; or

''(ii) to receive funding for free fruits and vegetables under funds provided for public health improvement under the heading 'DISEASE CONTROL, RESEARCH, AND TRAINING' under the heading 'CENTERS FOR DISEASE CONTROL AND PREVENTION' in title II of the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2004 (Division E of Public Law 108–199; 118 Stat. 238).

''(4) NOTICE OF AVAILABILITY.—To be eligible to participate in the program under this subsection, a school shall widely publicize within the school the availability of free fresh fruits and vegetables under the program.

''(5) REPORTS.—

''(A) INTERIM REPORTS.—Not later than September 30 of each of fiscal years 2005 through 2008, the Secretary, acting through the Administrator of the Food and Nutrition Service, shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate an interim report that describes the activities carried out under this subsection during the fiscal year covered by the report.

''(B) FINAL REPORT.—Not later than December 31, 2008, the Secretary, acting through the Administrator of the Food and Nutrition Service, shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a final report that describes the results of the program under this subsection.

''(6) FUNDING.—

''(A) EXISTING FUNDS.—The Secretary shall use to carry out this subsection any funds that remain under this subsection on the day before the date of enactment of this subparagraph.

''(B) MANDATORY FUNDS.—

''(i) IN GENERAL.—On October 1, 2004, and on each October 1 thereafter, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to carry out this subsection $9,000,000, to remain available until expended.

''(ii) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this subsection the funds made available under this subparagraph, without further appropriation.

''(C) AUTHORIZATION OF APPROPRIATIONS.—In addition to any amounts made available under subparagraphs (A) and (B), there are authorized to be appropriated such sums as are necessary to expand the program carried out under this subsection.

''(D) REALLOCATION.—The Secretary may reallocate any amounts made available to carry out this subsection that are not obligated or expended, as determined by the Secretary.''.

SEC. 121. SUMMER FOOD SERVICE RESIDENTIAL CAMP ELIGIBILITY.

Section 18 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769) is amended by adding at the end the following:

''(h) SUMMER FOOD SERVICE RESIDENTIAL CAMP ELIGIBILITY.—

''(1) IN GENERAL.—During the month after the date of enactment of this subsection through September, 2004, and the months of May through September, 2005, the Secretary shall modify eligibility criteria, at not more than 1 private nonprofit residential camp in each of not more than 2 States, as determined by the Secretary, for the purpose of identifying and evaluating alternative methods of determining the eligibility of residential private nonprofit camps to participate in the summer food service program for children established under section 13.

''(2) ELIGIBILITY.—To be eligible for the criteria modified under paragraph (1), a residential camp—

''(A) shall be a service institution (as defined in section 13(a)(1));

''(B) may not charge a fee to any child in residence at the camp; and

''(C) shall serve children who reside in an area in which poor economic conditions exist (as defined in section 13(a)(1)).

''(3) PAYMENTS.—

''(A) IN GENERAL.—Under this subsection, the Secretary shall provide reimbursement for meals served to all children at a residential camp at the payment rates specified in section 13(b)(1).

''(B) REIMBURSABLE MEALS.—A residential camp selected by the Secretary may receive reimbursement for not more than 3 meals, or 2 meals and 1 supplement, during each day of operation.

''(4) EVALUATION.—

''(A) INFORMATION FROM RESIDENTIAL CAMPS.—Not later than December 31, 2005, a residential camp selected under paragraph (1) shall report to the Secretary such information as is required by the Secretary concerning the requirements of this subsection.

''(B) REPORT TO CONGRESS.—Not later than March 31, 2006, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that evaluates the effect of this subsection on program participation and other factors, as determined by the Secretary.''.

SEC. 122. ACCESS TO LOCAL FOODS AND SCHOOL GARDENS.

Section 18 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769) (as amended by section 121) is amended by adding at the end the following:

''(i) ACCESS TO LOCAL FOODS AND SCHOOL GARDENS.—

''(1) IN GENERAL.—The Secretary may provide assistance, through competitive matching grants and technical assistance, to schools and nonprofit entities for projects that—

''(A) improve access to local foods in schools and institutions participating in programs under this Act and section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) through farm-to-cafeteria activities, including school gardens, that may include the acquisition of food and appropriate equipment and the provision of training and education;

''(B) are, at a minimum, designed to—

''(i) procure local foods from small- and medium-sized farms for school meals; and

''(ii) support school garden programs;

''(C) support nutrition education activities or curriculum planning that incorporates the participation of school children in farm-based agricultural education activities, that may include school gardens;

''(D) develop a sustained commitment to farm-to-cafeteria projects in the community by linking schools, State departments of agriculture, agricultural producers, parents, and other community stakeholders;

''(E) require $100,000 or less in Federal contributions;

''(F) require a Federal share of costs not to exceed 75 percent;

''(G) provide matching support in the form of cash or in-kind contributions (including facilities, equipment, or services provided by State and local governments and private sources); and

''(H) cooperate in an evaluation carried out by the Secretary.

''(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this subsection for each of fiscal years 2004 through 2009.''.

SEC. 123. YEAR-ROUND SERVICES FOR ELIGIBLE ENTITIES.

Section 18 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769) (as amended by section 122) is amended by adding at the end the following:

''(j) YEAR-ROUND SERVICES FOR ELIGIBLE ENTITIES.—

''(1) IN GENERAL.—A service institution that is described in section 13(a)(6) (excluding a public school), or a private nonprofit organization described in section 13(a)(7), and that is located in the State of California may be reimbursed—

''(A) for up to 2 meals during each day of operation served—

''(i) during the months of May through September;

''(ii) in the case of a service institution that operates a food service program for children on school vacation, at anytime under a continuous school calendar; and

''(iii) in the case of a service institution that provides meal service at a nonschool site to children who are not in school for a period during the school year due to a natural disaster, building repair, court order, or similar case, at anytime during such a period; and

''(B) for a snack served during each day of operation after school hours, weekends, and school holidays during the regular school calendar.

''(2) PAYMENTS.—The service institution shall be reimbursed consistent with section 13(b)(1).

''(3) ADMINISTRATION.—To receive reimbursement under this subsection, a service institution shall comply with section 13, other than subsections (b)(2) and (c)(1) of that section.

''(4) EVALUATION.—Not later than September 30, 2007, the State agency shall submit to the Secretary a report on the effect of this subsection on participation in the summer food service program for children established under section 13.

''(5) FUNDING.—The Secretary shall provide to the State of California such sums as are necessary to carry out this subsection for each of fiscal years 2005 through 2009.''.

SEC. 124. FREE LUNCH AND BREAKFAST ELIGIBILITY.

Section 18 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769) (as amended by section 123) is amended by adding at the end the following:

''(k) FREE LUNCH AND BREAKFAST ELIGIBILITY.—

''(1) IN GENERAL.—Subject to the availability of funds under paragraph (4), the Secretary shall expand the service of free lunches and breakfasts provided at schools participating in the school lunch program under this Act or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) in all or part of 5 States selected by the Secretary (of which at least 1 shall be a largely rural State with a significant Native American population).

''(2) INCOME ELIGIBILITY.—The income guidelines for determining eligibility for free lunches or breakfasts under this subsection shall be 185 percent of the applicable family size income levels contained in the nonfarm income poverty guidelines prescribed by the Office of Management and Budget, as adjusted annually in accordance with section 9(b)(1)(B).

''(3) EVALUATION.—

''(A) IN GENERAL.—Not later than 3 years after the implementation of this subsection, the Secretary shall conduct an evaluation to assess the impact of the changed income eligibility guidelines by comparing the school food authorities operating under this subsection to school food authorities not operating under this subsection.

''(B) IMPACT ASSESSMENT.—

''(i) CHILDREN.—The evaluation shall assess the impact of this subsection separately on—

''(I) children in households with incomes less than 130 percent of the applicable family income levels contained in the nonfarm poverty income guidelines prescribed by the Office of Management and Budget, as adjusted annually in accordance with section 9(b)(1)(B); and

''(II) children in households with incomes greater than 130 percent and not greater than 185 percent of the applicable family income levels contained in the nonfarm poverty income guidelines prescribed by the Office of Management and Budget, as adjusted annually in accordance with section 9(b)(1)(B).

''(ii) FACTORS.—The evaluation shall assess the impact of this subsection on—

''(I) certification and participation rates in the school lunch and breakfast programs;

''(II) rates of lunch- and breakfast-skipping;

''(III) academic achievement;

''(IV) the allocation of funds authorized in title I of the Elementary and Secondary Education Act (20 U.S.C. 6301) to local educational agencies and public schools; and

''(V) other factors determined by the Secretary.

''(C) COST ASSESSMENT.—The evaluation shall assess the increased costs associated with providing additional free, reduced price, or paid meals in the school food authorities operating under this subsection.

''(D) REPORT.—On completion of the evaluation, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the results of the evaluation under this paragraph.

''(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this subsection, to remain available until expended.''.

SEC. 125. TRAINING, TECHNICAL ASSISTANCE, AND FOOD SERVICE MANAGEMENT INSTITUTE.

(a) IN GENERAL.—Section 21(a)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769b–1(a)(1)) is amended by striking ''activities and'' and all that follows and inserting ''activities and provide—

''(A) training and technical assistance to improve the skills of individuals employed in—

''(i) food service programs carried out with assistance under this Act and, to the maximum extent practicable, using individuals who administer exemplary local food service programs in the State;

''(ii) school breakfast programs carried out with assistance under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773); and

''(iii) as appropriate, other federally assisted feeding programs; and

''(B) assistance, on a competitive basis, to State agencies for the purpose of aiding schools and school food authorities with at least 50 percent of enrolled children certified to receive free or reduced price meals (and, if there are any remaining funds, other schools and school food authorities) in meeting the cost of acquiring or upgrading technology and information management systems for use in food service programs carried out under this Act and section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), if the school or school food authority submits to the State agency an infrastructure development plan that—

''(i) addresses the cost savings and improvements in program integrity and operations that would result from the use of new or upgraded technology;

''(ii) ensures that there is not any overt identification of any child by special tokens or tickets, announced or published list of names, or by any other means;

''(iii) provides for processing and verifying applications for free and reduced price school meals;

''(iv) integrates menu planning, production, and serving data to monitor compliance with section 9(f)(1); and

''(v) establishes compatibility with statewide reporting systems;

''(C) assistance, on a competitive basis, to State agencies with low proportions of schools or students that—

''(i) participate in the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773); and

''(ii) demonstrate the greatest need, for the purpose of aiding schools in meeting costs associated with initiating or expanding a school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), including outreach and informational activities; and''.

(b) DUTIES OF FOOD SERVICE MANAGEMENT INSTITUTE.—Section 21(c)(2)(B) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769b–1(c)(2)(B)) is amended—

(1) by striking clauses (vi) and (vii) and inserting the following:

''(vi) safety, including food handling, hazard analysis and critical control point plan implementation, emergency readiness, responding to a food recall, and food biosecurity training;''; and

(2) by redesignating clauses (viii) through (x) as clauses (vii) through (ix), respectively.

(c) AUTHORIZATION OF APPROPRIATIONS.—

(1) TRAINING ACTIVITIES AND TECHNICAL ASSISTANCE.—Section 21(e)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769b–1(e)(1)) is amended by striking ''2003'' and inserting ''2009''.

(2) FOOD SERVICE MANAGEMENT INSTITUTE.—Section 21(e)(2)(A) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769b–1(e)(2)(A) is amended in the first sentence—

(A) by striking ''provide to the Secretary'' and all that follows through ''1998, and'' and inserting ''provide to the Secretary''; and

(B) by striking ''1999 and'' and inserting ''2004 and $4,000,000 for fiscal year 2005''.

SEC. 126. ADMINISTRATIVE ERROR REDUCTION.

(a) FEDERAL SUPPORT FOR TRAINING AND TECHNICAL ASSISTANCE.—Section 21 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769b–1) is amended by adding at the end the following:

''(f) ADMINISTRATIVE TRAINING AND TECHNICAL ASSISTANCE MATERIAL.—In collaboration with State educational agencies, local educational agencies, and school food authorities of varying sizes, the Secretary shall develop and distribute training and technical assistance material relating to the administration of school meals programs that are representative of the best management and administrative practices.

''(g) FEDERAL ADMINISTRATIVE SUPPORT.—

''(1) FUNDING.—

''(A) IN GENERAL.—Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to carry out this subsection—

''(i) on October 1, 2004, and October 1, 2005, $3,000,000; and

''(ii) on October 1, 2006, October 1, 2007, and October 1, 2008, $2,000,000.

''(B) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this subsection the funds transferred under subparagraph (A), without further appropriation.

''(C) AVAILABILITY OF FUNDS.—Funds transferred under subparagraph (A) shall remain available until expended.

''(2) USE OF FUNDS.—The Secretary may use funds provided under this subsection—

''(A) to provide training and technical assistance and material related to improving program integrity and administrative accuracy in school meals programs; and

''(B) to assist State educational agencies in reviewing the administrative practices of local educational agencies, to the extent determined by the Secretary.''.

(b) SELECTED ADMINISTRATIVE REVIEWS.—

(1) IN GENERAL.—Section 22(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769c(b)) is amended by adding at the end the following:

''(3) ADDITIONAL REVIEW REQUIREMENT FOR SELECTED LOCAL EDUCATIONAL AGENCIES.—

''(A) DEFINITION OF SELECTED LOCAL EDUCATIONAL AGENCIES.—In this paragraph, the term 'selected local educational agency' means a local educational agency that has a demonstrated high level of, or a high risk for, administrative error, as determined by the Secretary.

''(B) ADDITIONAL ADMINISTRATIVE REVIEW.—In addition to any review required by subsection (a) or paragraph (1), each State educational agency shall conduct an administrative review of each selected local educational agency during the review cycle established under subsection (a).

''(C) SCOPE OF REVIEW.—In carrying out a review under subparagraph (B), a State educational agency shall only review the administrative processes of a selected local educational agency, including application, certification, verification, meal counting, and meal claiming procedures.

''(D) RESULTS OF REVIEW.—If the State educational agency determines (on the basis of a review conducted under subparagraph (B)) that a selected local educational agency fails to meet performance criteria established by the Secretary, the State educational agency shall—

''(i) require the selected local educational agency to develop and carry out an approved plan of corrective action;

''(ii) except to the extent technical assistance is provided directly by the Secretary, provide technical assistance to assist the selected local educational agency in carrying out the corrective action plan; and

''(iii) conduct a followup review of the selected local educational agency under standards established by the Secretary.

''(4) RETAINING FUNDS AFTER ADMINISTRATIVE REVIEWS.—

''(A) IN GENERAL.—Subject to subparagraphs (B) and (C), if the local educational agency fails to meet administrative performance criteria established by the Secretary in both an initial review and a followup review under paragraph (1) or (3) or subsection (a), the Secretary may require the State educational agency to retain funds that would otherwise be paid to the local educational agency for school meals programs under procedures prescribed by the Secretary.

''(B) AMOUNT.—The amount of funds retained under subparagraph (A) shall equal the value of any overpayment made to the local educational agency or school food authority as a result of an erroneous claim during the time period described in subparagraph (C).

''(C) TIME PERIOD.—The period for determining the value of any overpayment under subparagraph (B) shall be the period—

''(i) beginning on the date the erroneous claim was made; and

''(ii) ending on the earlier of the date the erroneous claim is corrected or—

''(I) in the case of the first followup review conducted by the State educational agency of the local educational agency under this section after July 1, 2005, the date that is 60 days after the beginning of the period under clause (i); or

''(II) in the case of any subsequent followup review conducted by the State educational agency of the local educational agency under this section, the date that is 90 days after the beginning of the period under clause (i).

''(5) USE OF RETAINED FUNDS.—

''(A) IN GENERAL.—Subject to subparagraph (B), funds retained under paragraph (4) shall—

''(i) be returned to the Secretary, and may be used—

''(I) to provide training and technical assistance related to administrative practices designed to improve program integrity and administrative accuracy in school meals programs to State educational agencies and, to the extent determined by the Secretary, to local educational agencies and school food authorities;

''(II) to assist State educational agencies in reviewing the administrative practices of local educational agencies in carrying out school meals programs; and

''(III) to carry out section 21(f); or

''(ii) be credited to the child nutrition programs appropriation account.

''(B) STATE SHARE.—A State educational agency may retain not more than 25 percent of an amount recovered under paragraph (4), to carry out school meals program integrity initiatives to assist local educational agencies and school food authorities that have repeatedly failed, as determined by the Secretary, to meet administrative performance criteria.

''(C) REQUIREMENT.—To be eligible to retain funds under subparagraph (B), a State educational agency shall—

''(i) submit to the Secretary a plan describing how the State educational agency will use the funds to improve school meals program integrity, including measures to give priority to local educational agencies from which funds were retained under paragraph (4);

''(ii) consider using individuals who administer exemplary local food service programs in the provision of training and technical assistance; and

''(iii) obtain the approval of the Secretary for the plan.''.

(2) INTERPRETATION.—Nothing in the amendment made by paragraph (1) affects the requirements for fiscal actions as described in the regulations issued pursuant to section 22(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769c(a)).

(c) TRAINING AND TECHNICAL ASSISTANCE.—Section 7 of the Child Nutrition Act of 1966 (42 U.S.C. 1776) is amended—

(1) in subsection (e)—

(A) by striking ''(e) Each'' and inserting the following:

''(e) PLANS FOR USE OF ADMINISTRATIVE EXPENSE FUNDS.—

''(1) IN GENERAL.—Each''; and

(B) by striking ''After submitting'' and all that follows through ''change in the plan.'' and inserting the following:

''(2) UPDATES AND INFORMATION MANAGEMENT SYSTEMS.—

''(A) IN GENERAL.—After submitting the initial plan, a State shall be required to submit to the Secretary for approval only a substantive change in the plan.

''(B) PLAN CONTENTS.—Each State plan shall, at a minimum, include a description of how technology and information management systems will be used to improve program integrity by—

''(i) monitoring the nutrient content of meals served;

''(ii) training local educational agencies, school food authorities, and schools in how to use technology and information management systems (including verifying eligibility for free or reduced price meals using program participation or income data gathered by State or local agencies); and

''(iii) using electronic data to establish benchmarks to compare and monitor program integrity, program participation, and financial data.

''(3) TRAINING AND TECHNICAL ASSISTANCE.—Each State shall submit to the Secretary for approval a plan describing the manner in which the State intends to implement subsection (g) and section 22(b)(3) of the Richard B. Russell National School Lunch Act.'';

(2) by redesignating subsection (g) as subsection (j); and

(3) by inserting after subsection (f) the following:

''(g) STATE TRAINING.—

''(1) IN GENERAL.—At least annually, each State shall provide training in administrative practices (including training in application, certification, verification, meal counting, and meal claiming procedures) to local educational agency and school food authority administrative personnel and other appropriate personnel, with emphasis on the requirements established by the Child Nutrition and WIC Reauthorization Act of 2004 and the amendments made by that Act.

''(2) FEDERAL ROLE.—The Secretary shall—

''(A) provide training and technical assistance to a State; or

''(B) at the option of the Secretary, directly provide training and technical assistance described in paragraph (1).

''(3) REQUIRED PARTICIPATION.—In accordance with procedures established by the Secretary, each local educational agency or school food authority shall ensure that an individual conducting or overseeing administrative procedures described in paragraph (1) receives training at least annually, unless determined otherwise by the Secretary.

''(h) FUNDING FOR TRAINING AND ADMINISTRATIVE REVIEWS.—

''(1) FUNDING.—

''(A) IN GENERAL.—On October 1, 2004, and on each October 1 thereafter, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to carry out this subsection $4,000,000, to remain available until expended.

''(B) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this subsection the funds transferred under subparagraph (A), without further appropriation.

''(2) USE OF FUNDS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary shall use funds provided under this subsection to assist States in carrying out subsection (g) and administrative reviews of selected local educational agencies carried out under section 22 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769c).

''(B) EXCEPTION.—The Secretary may retain a portion of the amount provided to cover costs of activities carried out by the Secretary in lieu of the State.

''(3) ALLOCATION.—The Secretary shall allocate funds provided under this subsection to States based on the number of local educational agencies that have demonstrated a high level of, or a high risk for, administrative error, as determined by the Secretary, taking into account the requirements established by the Child Nutrition and WIC Reauthorization Act of 2004 and the amendments made by that Act.

''(4) REALLOCATION.—The Secretary may reallocate, to carry out this section, any amounts made available to carry out this subsection that are not obligated or expended, as determined by the Secretary.''.

SEC. 127. COMPLIANCE AND ACCOUNTABILITY.

Section 22(d) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769c(d)) is amended by striking ''$3,000,000 for each of the fiscal years 1994 through 2003'' and inserting ''$6,000,000 for each of fiscal years 2004 through 2009''.

SEC. 128. INFORMATION CLEARINGHOUSE.

Section 26(d) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769g(d)) is amended in the first sentence—

(1) by striking ''1998, and'' and inserting ''1998,''; and

(2) by striking ''through 2003'' and inserting ''through 2004, and $250,000 for each of fiscal years 2005 through 2009''.

SEC. 129. PROGRAM EVALUATION.

The Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) is amended by adding at the end the following:

''SEC. 28. PROGRAM EVALUATION.

''(a) PERFORMANCE ASSESSMENTS.—

''(1) IN GENERAL.—Subject to the availability of funds made available under paragraph (3), the Secretary, acting through the Administrator of the Food and Nutrition Service, may conduct annual national performance assessments of the meal programs under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

''(2) COMPONENTS.—In conducting an assessment, the Secretary may assess—

''(A) the cost of producing meals and meal supplements under the programs described in paragraph (1); and

''(B) the nutrient profile of meals, and status of menu planning practices, under the programs.

''(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $5,000,000 for fiscal year 2004 and each subsequent fiscal year.

''(b) CERTIFICATION IMPROVEMENTS.—

''(1) IN GENERAL.—Subject to the availability of funds made available under paragraph (5), the Secretary, acting through the Administrator of the Food and Nutrition Service, shall conduct a study of the feasibility of improving the certification process used for the school lunch program established under this Act.

''(2) PILOT PROJECTS.—In carrying out this subsection, the Secretary may conduct pilot projects to improve the certification process used for the school lunch program.

''(3) COMPONENTS.—In carrying out this subsection, the Secretary shall examine the use of—

''(A) other income reporting systems;

''(B) an integrated benefit eligibility determination process managed by a single agency;

''(C) income or program participation data gathered by State or local agencies; and

''(D) other options determined by the Secretary.

''(4) WAIVERS.—

''(A) IN GENERAL.—Subject to subparagraph (B), the Secretary may waive such provisions of this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) as are necessary to carry out this subsection.

''(B) PROVISIONS.—The protections of section 9(b)(6) shall apply to any study or pilot project carried out under this subsection.

''(5) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to

carry out this subsection such sums as are necessary.''.

TITLE II—AMENDMENTS TO CHILD NUTRITION ACT OF 1966

SEC. 201. SEVERE NEED ASSISTANCE.

Section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) is amended by striking subsection (d) and inserting the following:

''(d) SEVERE NEED ASSISTANCE.—

''(1) IN GENERAL.—Each State educational agency shall provide additional assistance to schools in severe need, which shall include only those schools (having a breakfast program or desiring to initiate a breakfast program) in which—

''(A) during the most recent second preceding school year for which lunches were served, 40 percent or more of the lunches served to students at the school were served free or at a reduced price; or

''(B) in the case of a school in which lunches were not served during the most recent second preceding school year, the Secretary otherwise determines that the requirements of subparagraph (A) would have been met.

''(2) ADDITIONAL ASSISTANCE.—A school, on the submission of appropriate documentation about the need circumstances in that school and the eligibility of the school for additional assistance, shall be entitled to receive the meal reimbursement rate specified in subsection (b)(2).''.

SEC. 202. STATE ADMINISTRATIVE EXPENSES.

(a) MINIMUM STATE ADMINISTRATIVE EXPENSE GRANTS.—Section 7 of the Child Nutrition Act of 1966 (42 U.S.C. 1776) is amended—

(1) by striking the section heading and all that follows through ''(a)(1) Each'' and inserting the following:

''SEC. 7. STATE ADMINISTRATIVE EXPENSES.

''(a) AMOUNT AND ALLOCATION OF FUNDS.—

''(1) AMOUNT AVAILABLE.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), each'';

(2) in subsection (a)—

(A) in paragraph (1)—

(i) by inserting after the first sentence the following:

''(B) MINIMUM AMOUNT.—In the case of each of fiscal years 2005 through 2007, the Secretary shall make available to each State for administrative costs not less than the initial allocation made to the State under this subsection for fiscal year 2004.'';

(ii) by striking ''The Secretary'' and inserting the following:

''(C) ALLOCATION.—The Secretary''; and

(iii) by striking the last sentence; and

(B) in paragraph (2)—

(i) by striking ''(2) The'' and inserting the following:

''(2) EXPENSE GRANTS.—

''(A) IN GENERAL.—Subject to subparagraph (B), the'';

(ii) in the second sentence—

(I) by striking ''In no case'' and inserting the following:

''(B) MINIMUM AMOUNT.—

''(i) IN GENERAL.—In no case'';

(II) by striking ''this subsection'' and inserting ''this paragraph''; and

(III) by striking ''$100,000'' and inserting ''$200,000 (as adjusted under clause (ii))''; and

(iii) by adding at the end the following:

''(ii) ADJUSTMENT.—On October 1, 2008, and each October 1 thereafter, the minimum dollar amount for a fiscal year specified in clause (i) shall be adjusted to reflect the percentage change between—

''(I) the value of the index for State and local government purchases, as published by the Bureau of Economic Analysis of the Department of Commerce, for the 12-month period ending June 30 of the second preceding fiscal year; and

''(II) the value of that index for the 12-month period ending June 30 of the preceding fiscal year.''.

(b) TECHNOLOGY INFRASTRUCTURE IMPROVEMENT.—Section 7 of the Child Nutrition Act of 1966 (42 U.S.C. 1776) is amended by inserting after subsection (h) (as added by section 126(c)(3)) the following:

''(i) TECHNOLOGY INFRASTRUCTURE IMPROVEMENT.—

''(1) IN GENERAL.—Each State shall submit to the Secretary, for approval by the Secretary, an amendment to the plan required by subsection (e) that describes the manner in which funds provided under this section will be used for technology and information management systems.

''(2) REQUIREMENTS.—The amendment shall, at a minimum, describe the manner in which the State will improve program integrity by—

''(A) monitoring the nutrient content of meals served;

''(B) providing training to local educational agencies, school food authorities, and schools on the use of technology and information management systems for activities including—

''(i) menu planning;

''(ii) collection of point-of-sale data; and

''(iii) the processing of applications for free and reduced price meals; and

''(C) using electronic data to establish benchmarks to compare and monitor program integrity, program participation, and financial data across schools and school food authorities.

''(3) TECHNOLOGY INFRASTRUCTURE GRANTS.—

''(A) IN GENERAL.—Subject to the availability of funds made available under paragraph (4) to carry out this paragraph, the Secretary shall, on a competitive basis, provide funds to States to be used to provide grants to local educational agencies, school food authorities, and schools to defray the cost of purchasing or upgrading technology and information management systems for use in programs authorized by this Act (other than section 17) and the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.).

''(B) INFRASTRUCTURE DEVELOPMENT PLAN.—To be eligible to receive a grant under this paragraph, a school or school food authority shall submit to the State a plan to purchase or upgrade technology and information management systems that addresses potential cost savings and methods to improve program integrity, including—

''(i) processing and verification of applications for free and reduced price meals;

''(ii) integration of menu planning, production, and serving data to monitor compliance with section 9(f)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(f)(1)); and

''(iii) compatibility with statewide reporting systems.

''(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection such sums as are necessary for each of fiscal years 2005 through 2009, to remain available until expended.''.

(c) REAUTHORIZATION.—Subsection (j) of section 7 of the Child Nutrition Act of 1966 (42 U.S.C. 1776) (as redesignated by section 126(c)(2)) is amended by striking ''2003'' and inserting ''2009''.

SEC. 203. SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN.

(a) DEFINITIONS.—

(1) NUTRITION EDUCATION.—Section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)) is amended by striking paragraph (7) and inserting the following:

''(7) NUTRITION EDUCATION.—The term 'nutrition education' means individual and group sessions and the provision of material that are designed to improve health status and achieve positive change in dietary and physical activity habits, and that emphasize the relationship between nutrition, physical activity, and health, all in keeping with the personal and cultural preferences of the individual.''.

(2) SUPPLEMENTAL FOODS.—Section 17(b)(14) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)(14)) is amended in the first sentence by inserting after ''children'' the following: ''and foods that promote the health of the population served by the program authorized by this section, as indicated by relevant nutrition science, public health concerns, and cultural eating patterns''.

(3) OTHER TERMS.—Section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)) is amended by adding at the end the following:

''(22) PRIMARY CONTRACT INFANT FORMULA.—The term 'primary contract infant formula' means the specific infant formula for which manufacturers submit a bid to a State agency in response to a rebate solicitation under this section and for which a contract is awarded by the State agency as a result of that bid.

''(23) STATE ALLIANCE.—The term 'State alliance' means 2 or more State agencies that join together for the purpose of procuring infant formula under the program by soliciting competitive bids for infant formula.''.

(b) ELIGIBILITY.—

(1) CERTIFICATION PERIOD.—Section 17(d)(3) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(d)(3)) is amended—

(A) by striking ''(3)(A) Persons'' and inserting the following:

''(3) CERTIFICATION.—

''(A) PROCEDURES.—

''(i) IN GENERAL.—Subject to clause (ii), a person''; and

(B) by adding at the end of subparagraph (A) the following:

''(ii) BREASTFEEDING WOMEN.—A State may elect to certify a breastfeeding woman for a period of 1 year postpartum or until a woman discontinues breastfeeding, whichever is earlier.''.

(2) PHYSICAL PRESENCE.—Section 17(d)(3)(C)(ii) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(d)(3)(C)(ii)) is amended—

(A) in subclause (I)(bb), by striking ''from a provider other than the local agency; or'' and inserting a semicolon;

(B) in subclause (II), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(III) an infant under 8 weeks of age—

''(aa) who cannot be present at certification for a reason determined appropriate by the local agency; and

''(bb) for whom all necessary certification information is provided.''.

(c) ADMINISTRATION.—

(1) PROCESSING VENDOR APPLICATIONS; PARTICIPANT ACCESS.—Section 17(f)(1)(C) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(1)(C)) is amended—

(A) in clause (i) by inserting ''at any of the authorized retail stores under the program'' after ''the program'';

(B) by redesignating clauses (ii) through (x) as clauses (iii) through (xi), respectively; and

(C) by inserting after clause (i) the following:

''(ii) procedures for accepting and processing vendor applications outside of the established timeframes if the State agency determines there will be inadequate access to the program, including in a case in which a previously authorized vendor sells a store under circumstances that do not permit

timely notification to the State agency of the change in ownership;''.

(2) ALLOWABLE USE OF FUNDS.—

(A) IN GENERAL.—Section 17(f)(11) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(11) is amended—

(i) by striking ''(11) The Secretary'' and inserting the following:

''(11) SUPPLEMENTAL FOODS.—

''(A) IN GENERAL.—The Secretary'';

(ii) in the second sentence, by striking ''To the degree'' and inserting the following:

''(B) APPROPRIATE CONTENT.—To the degree''; and

(iii) by adding at the end the following:

''(C) ALLOWABLE USE OF FUNDS.—Subject to the availability of funds, the Secretary shall award grants to not more than 10 local sites determined by the Secretary to be geographically and culturally representative of State, local, and Indian agencies, to evaluate the feasibility of including fresh, frozen, or canned fruits and vegetables (to be made available through private funds) as an addition to the supplemental foods prescribed under this section.

''(D) REVIEW OF AVAILABLE SUPPLEMENTAL FOODS.—As frequently as determined by the Secretary to be necessary to reflect the most recent scientific knowledge, the Secretary shall—

''(i) conduct a scientific review of the supplemental foods available under the program; and

''(ii) amend the supplemental foods available, as necessary, to reflect nutrition science, public health concerns, and cultural eating patterns.''.

(B) RULEMAKING.—Not later than 18 months after the date of receiving the review initiated by the National Academy of Sciences, Institute of Medicine in September 2003 of the supplemental foods available for the special supplemental nutrition program for women, infants, and children authorized under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786), the Secretary shall promulgate a final rule updating the prescribed supplemental foods available through the program.

(3) USE OF CLAIMS FROM LOCAL AGENCIES.—Section 17(f)(21) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(21)) is amended—

(A) in the paragraph heading, by striking ''VENDORS'' and inserting ''LOCAL AGENCIES, VENDORS,''; and

(B) by striking ''vendors'' and inserting ''local agencies, vendors,''.

(4) INFANT FORMULA BENEFITS.—

(A) IN GENERAL.—Section 17(f) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)) is amended by adding at the end the following:

''(25) INFANT FORMULA BENEFITS.—A State agency may round up to the next whole can of infant formula to allow all participants under the program to receive the full-authorized nutritional benefit specified by regulation.''.

(B) APPLICABILITY.—The amendment made by subparagraph (A) applies to infant formula provided under a contract resulting from a bid solicitation issued on or after October 1, 2004.

(5) NOTIFICATION OF VIOLATIONS.—Section 17(f) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)) (as amended by paragraph (4)) is amended by adding at the end the following:

''(26) NOTIFICATION OF VIOLATIONS.—If a State agency finds that a vendor has committed a violation that requires a pattern of occurrences in order to impose a penalty or sanction, the State agency shall notify the vendor of the initial violation in writing prior to documentation of another violation, unless the State agency determines that notifying the vendor would compromise an investigation.''.

(d) REAUTHORIZATION OF WIC PROGRAM.—Section 17(g) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(g)) is amended by striking ''(g)(1)'' and all that follows through ''As authorized'' in paragraph (1) and inserting the following:

''(g) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—

''(A) AUTHORIZATION.—There are authorized to be appropriated to carry out this section such sums as are necessary for each of fiscal years 2004 through 2009.

''(B) ADVANCE APPROPRIATIONS; AVAILABILITY.—As authorized''.

(e) NUTRITION SERVICES AND ADMINISTRATION FUNDS; COMPETITIVE BIDDING; RETAILERS.—

(1) IN GENERAL.—Section 17(h)(2)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(2)(A)) is amended by striking ''For each of the fiscal years 1995 through 2003, the'' and inserting ''The''.

(2) HEALTHY PEOPLE 2010 INITIATIVE.—Section 17(h)(4) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(4)) is amended—

(A) in subparagraph (D), by striking ''; and'' and inserting a semicolon;

(B) in subparagraph (E), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(F) partner with communities, State and local agencies, employers, health care professionals, and other entities in the private sector to build a supportive breastfeeding environment for women participating in the program under this section to support the breastfeeding goals of the Healthy People 2010 initiative.''.

(3) SIZE OF STATE ALLIANCES.—Section 17(h)(8)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(8)(A)) is amended by adding at the end the following:

''(iv) SIZE OF STATE ALLIANCES.—

''(I) IN GENERAL.—Except as provided in subclauses (II) through (IV), no State alliance may exist among States if the total number of infants served by States participating in the alliance as of October 1, 2003, or such subsequent date determined by the Secretary for which data is available, would exceed 100,000.

''(II) ADDITION OF INFANT PARTICIPANTS.—In the case of a State alliance that exists on the date of enactment of this clause, the alliance may continue and may expand to serve more than 100,000 infants but, except as provided in subclause (III), may not expand to include any additional State agency.

''(III) ADDITION OF SMALL STATE AGENCIES AND INDIAN STATE AGENCIES.—Any State alliance may expand to include any State agency that served less than 5,000 infant participants as of October 1, 2003, or such subsequent date determined by the Secretary for which data is available, or any Indian State agency, if the State agency or Indian State agency requests to join the State alliance.

''(IV) SECRETARIAL WAIVER.—The Secretary may waive the requirements of this clause not earlier than 30 days after submitting to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a written report that describes the cost-containment and competitive benefits of the proposed waiver.''.

(4) PRIMARY CONTRACT INFANT FORMULA.—

(A) IN GENERAL.—Section 17(h)(8)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(8)(A)) (as amended by paragraph (3)) is amended—

(i) in clause (ii)(I), by striking ''contract brand of'' and inserting ''primary contract'';

(ii) in clause (iii), by inserting ''for a specific infant formula for which manufacturers submit a bid'' after ''lowest net price''; and

(iii) by adding at the end the following:

''(v) FIRST CHOICE OF ISSUANCE.—The State agency shall use the primary contract infant formula as the first choice of issuance (by formula type), with all other infant formulas issued as an alternative to the primary contract infant formula.''.

(B) APPLICABILITY.—The amendments made by subparagraph (A) apply to a contract resulting from a bid solicitation issued on or after October 1, 2004.

(5) REBATE INVOICES.—Section 17(h)(8)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(8)(A)) (as amended by paragraph (4)(A)(iii)) is amended by adding at the end the following:

''(vi) REBATE INVOICES.—Each State agency shall have a system to ensure that infant formula rebate invoices, under competitive bidding, provide a reasonable estimate or an actual count of the number of units sold to participants in the program under this section.''.

(6) UNCOUPLING MILK AND SOY BIDS.—

(A) IN GENERAL.—Section 17(h)(8)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(8)(A)) (as amended by paragraph (5)) is amended by adding at the end the following:

''(vii) SEPARATE SOLICITATIONS.—In soliciting bids for infant formula under a competitive bidding system, any State agency, or State alliance, that served under the program a monthly average of more than 100,000 infants during the preceding 12-month period shall solicit bids from infant formula manufacturers under procedures that require that bids for rebates or discounts are solicited for milk-based and soy-based infant formula separately.''.

(B) APPLICABILITY.—The amendment made by this paragraph applies to a bid solicitation issued on or after October 1, 2004.

(7) CENT-FOR-CENT ADJUSTMENTS.—

(A) IN GENERAL.—Section 17(h)(8)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(8)(A)) (as amended by paragraph (6)(A)) is amended by adding at the end the following:

''(viii) CENT-FOR-CENT ADJUSTMENTS.—A bid solicitation for infant formula under the program shall require the manufacturer to adjust for price changes subsequent to the opening of the bidding process in a manner that requires—

''(I) a cent-for-cent increase in the rebate amounts if there is an increase in the lowest national wholesale price for a full truckload of the particular infant formula; and

''(II) a cent-for-cent decrease in the rebate amounts if there is a decrease in the lowest national wholesale price for a full truckload of the particular infant formula.''.

(B) CONFORMING AMENDMENT.—Section 17(h)(8)(A)(ii) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(8)(A)(ii)) is amended by striking ''rise'' and inserting ''change''.

(C) APPLICABILITY.—The amendments made by this paragraph apply to a bid solicitation issued on or after October 1, 2004.

(8) LIST OF INFANT FORMULA WHOLESALERS, DISTRIBUTORS, RETAILERS, AND MANUFACTURERS.—Section 17(h)(8)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(8)(A)) (as amended by paragraph (7)(A)) is amended by adding at the end the following:

''(ix) LIST OF INFANT FORMULA WHOLESALERS, DISTRIBUTORS, RETAILERS, AND MANUFACTURERS.—The State agency shall maintain a list of—

''(I) infant formula wholesalers, distributors, and retailers licensed in the State in accordance with State law (including regulations); and

''(II) infant formula manufacturers registered with the Food and Drug Administration that provide infant formula.

''(x) PURCHASE REQUIREMENT.—A vendor authorized to participate in the program under

this section shall only purchase infant formula from the list described in clause (ix).''.

(9) FUNDS FOR INFRASTRUCTURE, MANAGEMENT INFORMATION SYSTEMS, AND SPECIAL NUTRITION EDUCATION.—Section 17(h) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)) is amended by striking paragraph (10) and inserting the following:

''(10) FUNDS FOR INFRASTRUCTURE, MANAGEMENT INFORMATION SYSTEMS, AND SPECIAL NUTRITION EDUCATION.—

''(A) IN GENERAL.—For each of fiscal years 2006 through 2009, the Secretary shall use for the purposes specified in subparagraph (B), $64,000,000 or the amount of nutrition services and administration funds and supplemental food funds for the prior fiscal year that have not been obligated, whichever is less.

''(B) PURPOSES.—Of the amount made available under subparagraph (A) for a fiscal year, not more than—

''(i) $14,000,000 shall be used for—

''(I) infrastructure for the program under this section;

''(II) special projects to promote breastfeeding, including projects to assess the effectiveness of particular breastfeeding promotion strategies; and

''(III) special State projects of regional or national significance to improve the services of the program;

''(ii) $30,000,000 shall be used to establish, improve, or administer management information systems for the program, including changes necessary to meet new legislative or regulatory requirements of the program; and

''(iii) $20,000,000 shall be used for special nutrition education such as breast feeding peer counselors and other related activities.

''(C) PROPORTIONAL DISTRIBUTION.—In a case in which less than $64,000,000 is available to carry out this paragraph, the Secretary shall make a proportional distribution of funds allocated under subparagraph (B).''.

(10) VENDOR COST CONTAINMENT.—

(A) Section 17(h) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)) is amended by striking paragraph (11) and inserting the following:

''(11) VENDOR COST CONTAINMENT.—

''(A) PEER GROUPS.—

''(i) IN GENERAL.—The State agency shall—

''(I) establish a vendor peer group system;

''(II) in accordance with subparagraphs (B) and (C), establish competitive price criteria and allowable reimbursement levels for each vendor peer group; and

''(III) if the State agency elects to authorize any types of vendors described in subparagraph (D)(ii)(I)—

''(aa) distinguish between vendors described in subparagraph (D)(ii)(I) and other vendors by establishing—

''(AA) separate peer groups for vendors described in subparagraph (D)(ii)(I);or

''(BB) distinct competitive price criteria and allowable reimbursement levels for vendors described in subparagraph (D)(ii)(I) within a peer group that contains both vendors described in subparagraph (D)(ii)(I) and other vendors; and

''(bb) establish competitive price criteria and allowable reimbursement levels that comply with subparagraphs (B) and (C), respectively, and that do not result in higher food costs if program participants redeem supplemental food vouchers at vendors described in subparagraph (D)(ii)(I) rather than at vendors other than vendors described in subparagraph (D)(ii)(I).

Nothing in this paragraph shall be construed to compel a State agency to achieve lower food costs if program participants redeem supplemental food vouchers at vendors described in subparagraph (D)(ii)(I) rather than at vendors other than vendors described in subparagraph (D)(ii)(I).

''(ii) EXEMPTIONS.—The Secretary may exempt from the requirements of clause (i)—

''(I) a State agency that elects not to authorize any types of vendors described in subparagraph (D)(ii)(I) and that demonstrates to the Secretary that—

''(aa) compliance with clause (i) would be inconsistent with efficient and effective operation of the program administered by the State under this section; or

''(bb) an alternative cost-containment system would be as effective as a vendor peer group system; or

''(II) a State agency—

''(aa) in which the sale of supplemental foods that are obtained with food instruments from vendors described in subparagraph (D)(ii)(I) constituted less than 5 percent of total sales of supplemental foods that were obtained with food instruments in the State in the year preceding a year in which the exemption is effective; and

''(bb) that demonstrates to the Secretary that an alternative cost-containment system would be as effective as the vendor peer group system and would not result in higher food costs if program participants redeem supplemental food vouchers at vendors described in subparagraph (D)(ii)(I) rather than at vendors other than vendors described in subparagraph (D)(ii)(I).

''(B) COMPETITIVE PRICING.—

''(i) IN GENERAL.—The State agency shall establish competitive price criteria for each peer group for the selection of vendors for participation in the program that—

''(I) ensure that the retail prices charged by vendor applicants for the program are competitive with the prices charged by other vendors; and

''(II) consider—

''(aa) the shelf prices of the vendor for all buyers; or

''(bb) the prices that the vendor bid for supplemental foods, which shall not exceed the shelf prices of the vendor for all buyers.

''(ii) PARTICIPANT ACCESS.—In establishing competitive price criteria, the State agency shall consider participant access by geographic area.

''(iii) SUBSEQUENT PRICE INCREASES.—The State agency shall establish procedures to ensure that a retail store selected for participation in the program does not, subsequent to selection, increase prices to levels that would make the store ineligible for selection to participate in the program.

''(C) ALLOWABLE REIMBURSEMENT LEVELS.—

''(i) IN GENERAL.—The State agency shall establish allowable reimbursement levels for supplemental foods for each vendor peer group that ensure—

''(I) that payments to vendors in the vendor peer group reflect competitive retail prices; and

''(II) that the State agency does not reimburse a vendor for supplemental foods at a level that would make the vendor ineligible for authorization under the criteria established under subparagraph (B).

''(ii) PRICE FLUCTUATIONS.—The allowable reimbursement levels may include a factor to reflect fluctuations in wholesale prices.

''(iii) PARTICIPANT ACCESS.—In establishing allowable reimbursement levels, the State agency shall consider participant access in a geographic area.

''(D) EXEMPTIONS.—The State agency may exempt from competitive price criteria and allowable reimbursement levels established under this paragraph—

''(i) pharmacy vendors that supply only exempt infant formula or medical foods that are eligible under the program; and

''(ii) vendors—

''(I)(aa) for which more than 50 percent of the annual revenue of the vendor from the sale of food items consists of revenue from the sale of supplemental foods that are obtained with food instruments; or

''(bb) who are new applicants likely to meet the criteria of item (aa) under criteria approved by the Secretary; and

''(II) that are nonprofit.

''(E) COST CONTAINMENT.—If a State agency elects to authorize any types of vendors described in subparagraph (D)(ii)(I), the State agency shall demonstrate to the Secretary, and the Secretary shall certify, that the competitive price criteria and allowable reimbursement levels established under this paragraph for vendors described in subparagraph (D)(ii)(I) do not result in average payments per voucher to vendors described in subparagraph (D)(ii)(I) that are higher than average payments per voucher to comparable vendors other than vendors described in subparagraph (D)(ii)(I).

''(F) LIMITATION ON PRIVATE RIGHTS OF ACTION.—Nothing in this paragraph may be construed as creating a private right of action.

''(G) IMPLEMENTATION.—A State agency shall comply with this paragraph not later than 18 months after the date of enactment of this paragraph.''.

(B) CONFORMING AMENDMENT.—Section 17(f)(1)(C)(i) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(1)(C)(i)) is amended by inserting before the semicolon the following: '', including a description of the State agency's vendor peer group system, competitive price criteria, and allowable reimbursement levels that demonstrate that the State is in compliance with the cost-containment provisions in subsection (h)(11).''.

(11) IMPOSITION OF COSTS ON RETAIL STORES.—Section 17(h) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)) is amended by striking paragraph (12) and inserting the following:

''(12) IMPOSITION OF COSTS ON RETAIL STORES.—The Secretary may not impose, or allow a State agency to impose, the costs of any equipment, system, or processing required for electronic benefit transfers on any retail store authorized to transact food instruments, as a condition for authorization or participation in the program.''.

(12) UNIVERSAL PRODUCT CODES DATABASE.—Section 17(h) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)) (as amended by paragraph (11)) is amended by adding at the end the following:

''(13) UNIVERSAL PRODUCT CODES DATABASE.—The Secretary shall—

''(A) establish a national universal product code database for use by all State agencies in carrying out the program; and

''(B) make available from appropriated funds such sums as are required for hosting, hardware and software configuration, and support of the database.''.

(13) INCENTIVE ITEMS.—Section 17(h) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)) (as amended by paragraph (12)) is amended by adding at the end the following:

''(14) INCENTIVE ITEMS.—A State agency shall not authorize or make payments to a vendor described in paragraph (11)(D)(ii)(I) that provides incentive items or other free merchandise, except food or merchandise of nominal value (as determined by the Secretary), to program participants unless the vendor provides to the State agency proof that the vendor obtained the incentive items or merchandise at no cost.''.

(f) SPEND FORWARD AUTHORITY.—Section 17(i)(3)(A)(ii)(I) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(i)(3)(A)(ii)(I)) is amended by striking ''1 percent'' and inserting ''3 percent''.

(g) MIGRANT AND COMMUNITY HEALTH CENTERS INITIATIVE.—Section 17(j) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(j)) is amended—

(1) by striking paragraph (4); and

(2) by redesignating paragraph (5) as paragraph (4).

(h) FARMERS' MARKET NUTRITION PROGRAM.—

(1) ROADSIDE STANDS.—Section 17(m)(1) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)(1)) is amended by inserting ''and (at the option of a State) roadside stands'' after ''farmers' markets''.

(2) MATCHING FUNDS.—Section 17(m)(3) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)(3)) is amended by striking ''total'' both places it appears and inserting ''administrative''.

(3) BENEFIT VALUE.—Section 17(m)(5)(C)(ii) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)(5)(C)(ii)) is amended by striking ''$20'' and inserting ''$30''.

(4) REAUTHORIZATION.—Section 17(m)(9)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)(9)(A)) is amended by striking clause (i) and inserting the following:

''(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection such sums as are necessary for each of fiscal years 2004 through 2009.''.

(i) DEMONSTRATION PROJECT RELATING TO USE OF WIC PROGRAM FOR IDENTIFICATION AND ENROLLMENT OF CHILDREN IN CERTAIN HEALTH PROGRAMS.—

(1) IN GENERAL.—Section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) is amended by striking subsection (r).

(2) CONFORMING AMENDMENT.—Section 12 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760) is amended by striking subsection (p).

SEC. 204. LOCAL WELLNESS POLICY.

(a) IN GENERAL.—Not later than the first day of the school year beginning after June 30, 2006, each local educational agency participating in a program authorized by the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) shall establish a local school wellness policy for schools under the local educational agency that, at a minimum—

(1) includes goals for nutrition education, physical activity, and other school-based activities that are designed to promote student wellness in a manner that the local educational agency determines is appropriate;

(2) includes nutrition guidelines selected by the local educational agency for all foods available on each school campus under the local educational agency during the school day with the objectives of promoting student health and reducing childhood obesity;

(3) provides an assurance that guidelines for reimbursable school meals shall not be less restrictive than regulations and guidance issued by the Secretary of Agriculture pursuant to subsections (a) and (b) of section 10 of the Child Nutrition Act (42 U.S.C. 1779) and sections 9(f)(1) and 17(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(f)(1), 1766(a)), as those regulations and guidance apply to schools;

(4) establishes a plan for measuring implementation of the local wellness policy, including designation of 1 or more persons within the local educational agency or at each school, as appropriate, charged with operational responsibility for ensuring that the school meets the local wellness policy; and

(5) involves parents, students, representatives of the school food authority, the school board, school administrators, and the public in the development of the school wellness policy.

(b) TECHNICAL ASSISTANCE AND BEST PRACTICES.—

(1) IN GENERAL.—The Secretary, in coordination with the Secretary of Education and in consultation with the Secretary of Health and Human Services, acting through the Centers for Disease Control and Prevention, shall make available to local educational agencies, school food authorities, and State educational agencies, on request, information and technical assistance for use in—

(A) establishing healthy school nutrition environments;

(B) reducing childhood obesity; and

(C) preventing diet-related chronic diseases.

(2) CONTENT.—Technical assistance provided by the Secretary under this subsection shall—

(A) include relevant and applicable examples of schools and local educational agencies that have taken steps to offer healthy options for foods sold or served in schools;

(B) include such other technical assistance as is required to carry out the goals of promoting sound nutrition and establishing healthy school nutrition environments that are consistent with this section;

(C) be provided in such a manner as to be consistent with the specific needs and requirements of local educational agencies; and

(D) be for guidance purposes only and not be construed as binding or as a mandate to schools, local educational agencies, school food authorities, or State educational agencies.

(3) FUNDING.—

(A) IN GENERAL.—On July 1, 2006, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to carry out this subsection $4,000,000, to remain available until September 30, 2009.

(B) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this subsection the funds transferred under subparagraph (A), without further appropriation.

SEC. 205. TEAM NUTRITION NETWORK.

(a) TEAM NUTRITION NETWORK.—Section 19 of the Child Nutrition Act of 1966 (42 U.S.C. 1788) is amended to read as follows:

''SEC. 19. TEAM NUTRITION NETWORK.

''(a) PURPOSES.—The purposes of the team nutrition network are—

''(1) to establish State systems to promote the nutritional health of school children of the United States through nutrition education and the use of team nutrition messages and material developed by the Secretary, and to encourage regular physical activity and other activities that support healthy lifestyles for children, including those based on the most recent Dietary Guidelines for Americans published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341);

''(2) to provide assistance to States for the development of comprehensive and integrated nutrition education and active living programs in schools and facilities that participate in child nutrition programs;

''(3) to provide training and technical assistance and disseminate team nutrition messages to States, school and community nutrition programs, and child nutrition food service professionals;

''(4) to coordinate and collaborate with other nutrition education and active living programs that share similar goals and purposes; and

''(5) to identify and share innovative programs with demonstrated effectiveness in helping children to maintain a healthy weight by enhancing student understanding of healthful eating patterns and the importance of regular physical activity.

''(b) DEFINITION OF TEAM NUTRITION NETWORK.—In this section, the term 'team nutrition network' means a statewide multidisciplinary program for children to promote healthy eating and physical activity based on scientifically valid information and sound educational, social, and marketing principles.

''(c) GRANTS.—

''(1) IN GENERAL.—Subject to the availability of funds for use in carrying out this section, in addition to any other funds made available to the Secretary for team nutrition purposes, the Secretary, in consultation with the Secretary of Education, may make grants to State agencies for each fiscal year, in accordance with this section, to establish team nutrition networks to promote nutrition education through—

''(A) the use of team nutrition network messages and other scientifically based information; and

''(B) the promotion of active lifestyles.

''(2) FORM.—A portion of the grants provided under this subsection may be in the form of competitive grants.

''(3) FUNDS FROM NONGOVERNMENTAL SOURCES.—In carrying out this subsection, the Secretary may accept cash contributions from nongovernmental organizations made expressly to further the purposes of this section, to be managed by the Food and Nutrition Service, for use by the Secretary and the States in carrying out this section.

''(d) ALLOCATION.—Subject to the availability of funds for use in carrying out this section, the total amount of funds made available for a fiscal year for grants under this section shall equal not more than the sum of—

''(1) the product obtained by multiplying ½ cent by the number of lunches reimbursed through food service programs under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) during the second preceding fiscal year in schools, institutions, and service institutions that participate in the food service programs; and

''(2) the total value of funds received by the Secretary in support of this section from nongovernmental sources.

''(e) REQUIREMENTS FOR STATE PARTICIPATION.—To be eligible to receive a grant under this section, a State agency shall submit to the Secretary a plan that—

''(1) is subject to approval by the Secretary; and

''(2) is submitted at such time and in such manner, and that contains such information, as the Secretary may require, including—

''(A) a description of the goals and proposed State plan for addressing the health and other consequences of children who are at risk of becoming overweight or obese;

''(B) an analysis of the means by which the State agency will use and disseminate the team nutrition messages and material developed by the Secretary;

''(C) an explanation of the ways in which the State agency will use the funds from the grant to work toward the goals required under subparagraph (A), and to promote healthy eating and physical activity and fitness in schools throughout the State;

''(D) a description of the ways in which the State team nutrition network messages and activities will be coordinated at the State level with other health promotion and education activities;

''(E) a description of the consultative process that the State agency employed in the development of the model nutrition and physical activity programs, including consultations with individuals and organizations with expertise in promoting public health, nutrition, or physical activity;

''(F) a description of how the State agency will evaluate the effectiveness of each program developed by the State agency;

''(G) an annual summary of the team nutrition network activities;

''(H) a description of the ways in which the total school environment will support healthy eating and physical activity; and

''(I) a description of how all communications to parents and legal guardians of students who are members of a household receiving or applying for assistance under the program shall be in an understandable and uniform format and, to the maximum extent practicable, in a language that parents and legal guardians can understand.

''(f) STATE COORDINATOR.—Each State that receives a grant under this section shall appoint a team nutrition network coordinator who shall—

''(1) administer and coordinate the team nutrition network within and across schools, school food authorities, and other child nutrition program providers in the State; and

''(2) coordinate activities of the Secretary, acting through the Food and Nutrition Service, and State agencies responsible for other children's health, education, and wellness programs to implement a comprehensive, coordinated team nutrition network program.

''(g) AUTHORIZED ACTIVITIES.—A State agency that receives a grant under this section may use funds from the grant—

''(1)(A) to collect, analyze, and disseminate data regarding the extent to which children and youths in the State are overweight, physically inactive, or otherwise suffering from nutrition-related deficiencies or disease conditions; and

''(B) to identify the programs and services available to meet those needs;

''(2) to implement model elementary and secondary education curricula using team nutrition network messages and material developed by the Secretary to create a comprehensive, coordinated nutrition and physical fitness awareness and obesity prevention program;

''(3) to implement pilot projects in schools to promote physical activity and to enhance the nutritional status of students;

''(4) to improve access to local foods through farm-to-cafeteria activities that may include the acquisition of food and the provision of training and education;

''(5) to implement State guidelines in health (including nutrition education and physical education guidelines) and to emphasize regular physical activity during school hours;

''(6) to establish healthy eating and lifestyle policies in schools;

''(7) to provide training and technical assistance to teachers and school food service professionals consistent with the purposes of this section;

''(8) to collaborate with public and private organizations, including community-based organizations, State medical associations, and public health groups, to develop and implement nutrition and physical education programs targeting lower income children, ethnic minorities, and youth at a greater risk for obesity.

''(h) LOCAL NUTRITION AND PHYSICAL ACTIVITY GRANTS.—

''(1) IN GENERAL.—Subject to the availability of funds to carry out this subsection, the Secretary, in consultation with the Secretary of Education, shall provide assistance to selected local educational agencies to create healthy school nutrition environments, promote healthy eating habits, and increase physical activity, consistent with the Dietary Guidelines for Americans published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341), among elementary and secondary education students.

''(2) SELECTION OF SCHOOLS.—In selecting local educational agencies for grants under this subsection, the Secretary shall—

''(A) provide for the equitable distribution of grants among—

''(i) urban, suburban, and rural schools; and

''(ii) schools with varying family income levels;

''(B) consider factors that affect need, including local educational agencies with significant minority or low-income student populations; and

''(C) establish a process that allows the Secretary to conduct an evaluation of how funds were used.

''(3) REQUIREMENT FOR PARTICIPATION.—To be eligible to receive assistance under this subsection, a local educational agency shall, in consultation with individuals who possess education or experience appropriate for representing the general field of public health, including nutrition and fitness professionals, submit to the Secretary an application that shall include—

''(A) a description of the need of the local educational agency for a nutrition and physical activity program, including an assessment of the nutritional environment of the school;

''(B) a description of how the proposed project will improve health and nutrition through education and increased access to physical activity;

''(C) a description of how the proposed project will be aligned with the local wellness policy required under section 204 of the Child Nutrition and WIC Reauthorization Act of 2004;

''(D) a description of how funds under this subsection will be coordinated with other programs under this Act, the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.), or other Acts, as appropriate, to improve student health and nutrition;

''(E) a statement of the measurable goals of the local educational agency for nutrition and physical education programs and promotion;

''(F) a description of the procedures the agency will use to assess and publicly report progress toward meeting those goals; and

''(G) a description of how communications to parents and guardians of participating students regarding the activities under this subsection shall be in an understandable and uniform format, and, to the extent maximum practicable, in a language that parents can understand.

''(4) DURATION.—Subject to the availability of funds made available to carry out this subsection, a local educational agency receiving assistance under this subsection shall conduct the project during a period of 3 successive school years beginning with the initial fiscal year for which the local educational agency receives funds.

''(5) AUTHORIZED ACTIVITIES.—An eligible applicant that receives assistance under this subsection—

''(A) shall use funds provided to—

''(i) promote healthy eating through the development and implementation of nutrition education programs and curricula based on the Dietary Guidelines for Americans published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341); and

''(ii) increase opportunities for physical activity through after school programs, athletics, intramural activities, and recess; and

''(B) may use funds provided to—

''(i) educate parents and students about the relationship of a poor diet and inactivity to obesity and other health problems;

''(ii) develop and implement physical education programs that promote fitness and lifelong activity;

''(iii) provide training and technical assistance to food service professionals to develop more appealing, nutritious menus and recipes;

''(iv) incorporate nutrition education into physical education, health education, and after school programs, including athletics;

''(v) involve parents, nutrition professionals, food service staff, educators, community leaders, and other interested parties in assessing the food options in the school environment and developing and implementing an action plan to promote a balanced and healthy diet;

''(vi) provide nutrient content or nutrition information on meals served through the school lunch program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) and the school breakfast program established by section 4 of this Act and items sold a la carte during meal times;

''(vii) encourage the increased consumption of a variety of healthy foods, including fruits, vegetables, whole grains, and low-fat dairy products, through new initiatives to creatively market healthful foods, such as salad bars and fruit bars;

''(viii) offer healthy food choices outside program meals, including by making low-fat and nutrient dense options available in vending machines, school stores, and other venues; and

''(ix) provide nutrition education, including sports nutrition education, for teachers, coaches, food service staff, athletic trainers, and school nurses.

''(6) REPORT.—Not later than 18 months after completion of the projects and evaluations under this subsection, the Secretary shall—

''(A) submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions and the Committee on Agriculture, Nutrition and Forestry of the Senate a report describing the results of the evaluation under this subsection; and

''(B) make the report available to the public, including through the Internet.

''(i) NUTRITION EDUCATION SUPPORT.—In carrying out the purpose of this section to support nutrition education, the Secretary may provide for technical assistance and grants to improve the quality of school meals and access to local foods in schools and institutions.

''(j) LIMITATION.—Material prepared under this section regarding agricultural commodities, food, or beverages, must be factual and without bias.

''(k) TEAM NUTRITION NETWORK INDEPENDENT EVALUATION.—

''(1) IN GENERAL.—Subject to the availability of funds to carry out this subsection, the Secretary shall offer to enter into an agreement with an independent, nonpartisan, science-based research organization—

''(A) to conduct a comprehensive independent evaluation of the effectiveness of the team nutrition initiative and the team nutrition network under this section; and

''(B) to identify best practices by schools in—

''(i) improving student understanding of healthful eating patterns;

''(ii) engaging students in regular physical activity and improving physical fitness;

''(iii) reducing diabetes and obesity rates in school children;

''(iv) improving student nutrition behaviors on the school campus, including by increasing healthier meal choices by students,

as evidenced by greater inclusion of fruits, vegetables, whole grains, and lean dairy and protein in meal and snack selections;

''(v) providing training and technical assistance for food service professionals resulting in the availability of healthy meals that appeal to ethnic and cultural taste preferences;

''(vi) linking meals programs to nutrition education activities;

''(vii) successfully involving parents, school administrators, the private sector, public health agencies, nonprofit organizations, and other community partners;

''(viii) ensuring the adequacy of time to eat during school meal periods; and

''(ix) successfully generating revenue through the sale of food items, while providing healthy options to students through vending, student stores, and other venues.

''(2) REPORT.—Not later than 3 years after funds are made available to carry out this subsection, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives, the Committee on Health, Education, Labor, and Pensions and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the findings of the independent evaluation.

''(l) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.''.

(b) CONFORMING AMENDMENT.—Section 21(c)(2)(E) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769b–1(c)(2)(E)) is amended by striking '', including'' and all that follows through ''1966''.

SEC. 206. REVIEW OF BEST PRACTICES IN THE BREAKFAST PROGRAM.

(a) REVIEW.—

(1) IN GENERAL.—Subject to the availability of funds under subsection (c), the Secretary of Agriculture shall enter into an agreement with a research organization to collect and disseminate a review of best practices to assist school food authorities in addressing existing impediments at the State and local level that hinder the growth of the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

(2) RECOMMENDATIONS.—The review shall describe model breakfast programs and offer recommendations for schools to overcome obstacles, including—

(A) the length of the school day;

(B) bus schedules; and

(C) potential increases in costs at the State and local level.

(b) DISSEMINATION.—Not later than 1 year after the date of enactment of this Act, the Secretary shall—

(1) make the review required under subsection (a) available to school food authorities via the Internet, including recommendations to improve participation in the school breakfast program; and

(2) transmit to Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a copy of the review.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

TITLE III—COMMODITY DISTRIBUTION PROGRAMS

SEC. 301. COMMODITY DISTRIBUTION PROGRAMS.

Section 15 of the Commodity Distribution Reform Act and WIC Amendments of 1987 (7 U.S.C. 612c note; Public Law 100–237) is amended by striking subsection (e).

TITLE IV—MISCELLANEOUS

SEC. 401. SENSE OF CONGRESS REGARDING EFFORTS TO PREVENT AND REDUCE CHILDHOOD OBESITY.

(a) FINDINGS.—Congress finds that—

(1) childhood obesity in the United States has reached critical proportions;

(2) childhood obesity is associated with numerous health risks and the incidence of chronic disease later in life;

(3) the prevention of obesity among children yields significant benefits in terms of preventing disease and the health care costs associated with such diseases;

(4) further scientific and medical data on the prevalence of childhood obesity is necessary in order to inform efforts to fight childhood obesity; and

(5) the State of Arkansas—

(A) is the first State in the United States to have a comprehensive statewide initiative to combat and prevent childhood obesity by—

(i) annually measuring the body mass index of public school children in the State from kindergarten through 12th grade; and

(ii) providing that information to the parents of each child with associated information about the health implications of the body mass index of the child;

(B) maintains, analyzes, and reports on annual and longitudinal body mass index data for the public school children in the State; and

(C) develops and implements appropriate interventions at the community and school level to address obesity, the risk of obesity, and the condition of being overweight, including efforts to encourage healthy eating habits and increased physical activity.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the State of Arkansas, in partnership with the University of Arkansas for Medical Sciences and the Arkansas Center for Health Improvement, should be commended for its leadership in combating childhood obesity; and

(2) the efforts of the State of Arkansas to implement a statewide initiative to combat and prevent childhood obesity are exemplary and could serve as a model for States across the United States.

TITLE V—IMPLEMENTATION

SEC. 501. GUIDANCE AND REGULATIONS.

(a) GUIDANCE.—As soon as practicable after the date of enactment of this Act, the Secretary of Agriculture shall issue guidance to implement the amendments made by sections 102, 103, 104, 105, 106, 107, 111, 116, 119(c), 119(g), 120, 126(b), 126(c), 201, 203(a)(3), 203(b), 203(c)(5), 203(e)(3), 203(e)(4), 203(e)(5), 203(e)(6), 203(e)(7), 203(e)(10), and 203(h)(1).

(b) INTERIM FINAL REGULATIONS.—The Secretary may promulgate interim final regulations to implement the amendments described in subsection (a).

(c) REGULATIONS.—Not later than 2 years after the date of enactment of this Act, the Secretary shall promulgate final regulations to implement the amendments described in subsection (a).

SEC. 502. EFFECTIVE DATES.

(a) IN GENERAL.—Except as otherwise provided in this Act, this Act and the amendments made by this Act take effect on the date of enactment of this Act.

(b) SPECIAL EFFECTIVE DATES.—

(1) JULY 1, 2004.—The amendments made by sections 106, 107, 126(c), and 201 take effect on July 1, 2004.

(2) OCTOBER 1, 2004.—The amendments made by sections 119(c), 119(g), 202(a), 203(a), 203(b), 203(c)(1), 203(c)(5), 203(e)(5), 203(e)(8), 203(e)(10), 203(e)(13), 203(f), 203(h)(1), and 203(h)(2) take effect on October 1, 2004.

(3) JANUARY 1, 2005.—The amendments made by sections 116(f)(1) and 116(f)(3) take effect on January 1, 2005.

(4) JULY 1, 2005.—The amendments made by sections 102, 104, 105, 111, and 126(b) take effect on July 1, 2005.

(5) OCTOBER 1, 2005.—The amendments made by sections 116(d) and 203(e)(9) take effect on October 1, 2005.

SA 3475. Mr. WARNER (for Mr. GREGG) proposed an amendment to amendment SA 3400 proposed by Mr. FEINGOLD (for himself, Mrs. MURRAY, Mr. CORZINE, and Mr. DAYTON) to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; as follows:

Strike the matter proposed to be inserted, and insert the following:

Subtitle F—Military Families Workplace Flexibility

SEC. 661. SHORT TITLE.

This subtitle may be cited as the ''Military Families Workplace Flexibility Act''.

SEC. 662. BIWEEKLY WORK PROGRAMS AND FLEXIBLE CREDIT HOUR PROGRAMS.

(a) IN GENERAL.—The Fair Labor Standards Act of 1938 is amended by inserting after section 13 (29 U.S.C. 213) the following:

''SEC. 13A. BIWEEKLY WORK PROGRAMS AND FLEXIBLE CREDIT HOUR PROGRAMS.

''(a) ELIGIBLE EMPLOYEE.—For the purposes of this section, an employee who is a spouse, child (including an adopted child or stepchild), or parent of a member of the Armed Forces is eligible for the program benefits under this section during the following periods:

''(1) The period during which the member of the Armed Forces is serving on active duty and deployed to the area of operations of a contingency operation.

''(2) In the case of a member of the reserve components called or ordered to active duty pursuant to a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code, the period—

''(A) beginning on the earlier of the date on which active duty commences or the date on which the member receives a delayed-effective-date active-duty order (as defined in section 1074(d)(2) of such title); and

''(B) ending on the date on which the member is released from the active duty to which so called or ordered.

''(b) VOLUNTARY PARTICIPATION.—

''(1) IN GENERAL.—Except as provided in paragraph (2), no eligible employee may be required to participate in a program described in this section. Participation in a program described in this section may not be a condition of employment.

''(3) COLLECTIVE BARGAINING AGREEMENT.—In a case in which a valid collective bargaining agreement exists between an employer and the labor organization that has been certified or recognized as the representative of the eligible employees of the employer under applicable law, an eligible employee may only be required to participate in such a program in accordance with the agreement.

''(c) BIWEEKLY WORK PROGRAMS.—

''(1) IN GENERAL.—Notwithstanding section 7, an employer may establish biweekly work programs that allow the use of a biweekly work schedule for an eligible employee—

''(A) that consists of a basic work requirement of not more than 80 hours, over a 2-week period; and

''(B) in which more than 40 hours of the work requirement may occur in a week of the period, except that no more than 10 hours may be shifted between the 2 weeks involved.

''(2) CONDITIONS.—An employer may carry out a biweekly work program described in paragraph (1) for eligible employees only pursuant to the following:

''(A) AGREEMENT.—The program may be carried out only in accordance with—

''(i) applicable provisions of a collective bargaining agreement between the employer and the labor organization that has been certified or recognized as the representative of the eligible employees under applicable law; or

''(ii) in the case of an eligible employee who is not represented by a labor organization described in clause (i), a written agreement arrived at between the employer and eligible employee before the performance of the work involved if the agreement was entered into knowingly and voluntarily by such eligible employee and was not a condition of employment.

''(B) STATEMENT.—The program shall apply to an eligible employee described in subparagraph (A)(ii) if such eligible employee has affirmed, in a written statement that is made, kept, and preserved in accordance with section 11(c), that the eligible employee has chosen to participate in the program.

''(C) MINIMUM SERVICE.—No eligible employee may participate, or agree to participate, in the program unless the eligible employee has been employed for at least 12 months by the employer, and for at least 1,250 hours of service with the employer during the previous 12-month period.

''(3) COMPENSATION FOR HOURS IN SCHEDULE.—Notwithstanding section 7, in the case of an eligible employee participating in such a biweekly work program, the eligible employee shall be compensated for each hour in such a biweekly work schedule at a rate not less than the regular rate at which the eligible employee is employed.

''(4) COMPUTATION OF OVERTIME.—All hours worked by the eligible employee in excess of such a biweekly work schedule or in excess of 80 hours in the 2-week period, that are requested in advance by the employer, shall be overtime hours.

''(5) OVERTIME COMPENSATION PROVISION.—The eligible employee shall be compensated for each such overtime hour at a rate not less than one and one-half times the regular rate at which the eligible employee is employed, in accordance with section 7(a)(1).

''(6) DISCONTINUANCE OF PROGRAM OR WITHDRAWAL.—

''(A) DISCONTINUANCE OF PROGRAM.—An employer that has established a biweekly work program under paragraph (1) may discontinue the program for eligible employees described in paragraph (2)(A)(ii) after providing 30 days' written notice to the eligible employees who are subject to an agreement described in paragraph (2)(A)(ii).

''(B) WITHDRAWAL.—An eligible employee may withdraw an agreement described in paragraph (2)(A)(ii) at the end of any 2-week period described in paragraph (1)(A), by submitting a written notice of withdrawal to the employer of the eligible employee.

''(d) FLEXIBLE CREDIT HOUR PROGRAMS.—

''(1) IN GENERAL.—Notwithstanding section 7, an employer may establish flexible credit hour programs, under which, at the election of an eligible employee, the employer and the eligible employee jointly designate hours for the eligible employee to work that are in excess of the basic work requirement of the eligible employee so that the eligible employee can accrue flexible credit hours to reduce the hours worked in a week or a day subsequent to the day on which the flexible credit hours are worked.

''(2) CONDITIONS.—An employer may carry out a flexible credit hour program described in paragraph (1) for eligible employees only pursuant to the following:

''(A) AGREEMENT.—The program may be carried out only in accordance with—

''(i) applicable provisions of a collective bargaining agreement between the employer and the labor organization that has been certified or recognized as the representative of the eligible employees under applicable law; or

''(ii) in the case of an eligible employee who is not represented by a labor organization described in clause (i), a written agreement arrived at between the employer and eligible employee before the performance of the work involved if the agreement was entered into knowingly and voluntarily by such eligible employee and was not a condition of employment.

''(B) STATEMENT.—The program shall apply to an eligible employee described in subparagraph (A)(ii) if such eligible employee has affirmed, in a written statement that is made, kept, and preserved in accordance with section 11(c), that the eligible employee has chosen to participate in the program.

''(C) MINIMUM SERVICE.—No eligible employee may participate, or agree to participate, in the program unless the eligible employee has been employed for at least 12 months by the employer, and for at least 1,250 hours of service with the employer during the previous 12-month period.

''(D) HOURS.—An agreement that is entered into under subparagraph (A) shall provide that, at the election of an eligible employee, the employer and the eligible employee will jointly designate, for an applicable workweek, flexible credit hours for the eligible employee to work.

''(E) LIMIT.—An eligible employee shall be eligible to accrue flexible credit hours if the eligible employee has not accrued flexible credit hours in excess of the limit applicable to the eligible employee prescribed by paragraph (3).

''(3) HOUR LIMIT.—

''(A) MAXIMUM HOURS.—An eligible employee who is participating in such a flexible credit hour program may accrue not more than 50 flexible credit hours.

''(B) COMPENSATION DATE.—Not later than January 31 of each calendar year, the employer of an eligible employee who is participating in such a flexible credit hour program shall provide monetary compensation for any flexible credit hours accrued during the preceding calendar year that were not used prior to December 31 of the preceding calendar year at a rate not less than the regular rate at which the eligible employee is employed on the date the eligible employee receives the compensation. An employer may designate and communicate to the eligible employees of the employer a 12-month period other than the calendar year, in which case the compensation shall be provided not later than 31 days after the end of the 12-month period.

''(4) COMPENSATION FOR FLEXIBLE CREDIT HOURS.—Notwithstanding section 7, in the case of an eligible employee participating in such a flexible credit hour program, the eligible employee shall be compensated for each flexible credit hour at a rate not less than the regular rate at which the eligible employee is employed.

''(5) COMPUTATION OF OVERTIME.—All hours worked by the eligible employee in excess of 40 hours in a week that are requested in advance by the employer, other than flexible credit hours, shall be overtime hours.

''(6) OVERTIME COMPENSATION PROVISION.—The eligible employee shall be compensated for each such overtime hour at a rate not less than one and one-half times the regular rate at which the eligible employee is employed, in accordance with section 7(a)(1).

''(7) USE OF TIME.—An eligible employee—

''(A) who has accrued flexible credit hours; and

''(B) who has requested the use of the accrued flexible credit hours,

shall be permitted by the employer of the eligible employee to use the accrued flexible credit hours within a reasonable period after making the request if the use of the accrued flexible credit hours does not unduly disrupt the operations of the employer.

''(8) DISCONTINUANCE OF PROGRAM OR WITHDRAWAL.—

''(A) DISCONTINUANCE OF PROGRAM.—An employer that has established a flexible credit hour program under paragraph (1) may discontinue the program for eligible employees described in paragraph (2)(A)(ii) after providing 30 days' written notice to the eligible employees who are subject to an agreement described in paragraph (2)(A)(ii).

''(B) WITHDRAWAL.—An eligible employee may withdraw an agreement described in paragraph (2)(A)(ii) at any time, by submitting a written notice of withdrawal to the employer of the eligible employee. An eligible employee may also request in writing that monetary compensation be provided, at any time, for all flexible credit hours accrued that have not been used. Within 30 days after receiving the written request, the employer shall provide the eligible employee the monetary compensation due at a rate not less than the regular rate at which the eligible employee is employed on the date the eligible employee receives the compensation.

''(e) PROHIBITION OF COERCION.—

''(1) IN GENERAL.—An employer shall not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any eligible employee for the purpose of—

''(A) interfering with the rights of the eligible employee under this section to elect or not to elect to work a biweekly work schedule;

''(B) interfering with the rights of the eligible employee under this section to elect or not to elect to participate in a flexible credit hour program, or to elect or not to elect to work flexible credit hours (including working flexible credit hours in lieu of overtime hours);

''(C) interfering with the rights of the eligible employee under this section to use accrued flexible credit hours in accordance with subsection (d)(7); or

''(D) requiring the eligible employee to use the flexible credit hours.

''(2) DEFINITION.—In paragraph (1), the term 'intimidate, threaten, or coerce' includes promising to confer or conferring any benefit (such as appointment, promotion, or compensation) or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

''(f) DEFINITIONS.—In this section:

''(1) BASIC WORK REQUIREMENT.—The term 'basic work requirement' means the number of hours, excluding overtime hours, that an eligible employee is required to work or is required to account for by leave or otherwise.

''(2) COLLECTIVE BARGAINING.—The term 'collective bargaining' means the performance of the mutual obligation of the representative of an employer and the labor organization that has been certified or recognized as the representative of the eligible employees of the employer under applicable

law to meet at reasonable times and to consult and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting such eligible employees and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph shall not compel either party to agree to a proposal or to make a concession.

''(3) COLLECTIVE BARGAINING AGREEMENT.—The term 'collective bargaining agreement' means an agreement entered into as a result of collective bargaining.

''(4) ELECTION.—The term 'at the election of', used with respect to an eligible employee, means at the initiative of, and at the request of, the eligible employee.

''(5) EMPLOYEE.—The term 'employee' means an individual—

''(A) who is an employee (as defined in section 3);

''(B) who is not an employee of a public agency; and

''(C) to whom section 7(a) applies.

''(6) EMPLOYER.—The term 'employer'—

''(A) means an employer (as defined in section 3 or as defined in section 101 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2611)); but

''(B) does not include the General Accounting Office, the Library of Congress, or a public agency.

''(7) FLEXIBLE CREDIT HOURS.—The term 'flexible credit hours' means any hours, within a flexible credit hour program established under subsection (d), that are in excess of the basic work requirement of an eligible employee and that, at the election of the eligible employee, the employer and the eligible employee jointly designate for the eligible employee to work so as to reduce the hours worked in a week on a day subsequent to the day on which the flexible credit hours are worked.

''(8) OVERTIME HOURS.—The term 'overtime hours'—

''(A) when used with respect to biweekly work programs under subsection (c), means all hours worked in excess of the biweekly work schedule involved or in excess of 80 hours in the 2-week period involved, that are requested in advance by an employer; or

''(B) when used with respect to flexible credit hour programs under subsection (d), means all hours worked in excess of 40 hours in a week that are requested in advance by an employer, but does not include flexible credit hours.

''(9) REGULAR RATE.—The term 'regular rate' has the meaning given the term in section 7(e).''.

(b) REMEDIES.—

(1) PROHIBITIONS.—Section 15(a)(3) of the Fair Labor Standards Act of 1938 (29 U.S.C. 215(a)(3)) is amended—

(A) by inserting ''(A)'' after ''(3)'';

(B) by adding ''or'' after the semicolon; and

(C) by adding at the end the following:

''(B) to violate any of the provisions of section 13A;''.

(2) REMEDIES AND SANCTIONS.—Section 16 of the Fair Labor Standards Act of 1938 (29 U.S.C. 216) is amended—

(A) in subsection (c)—

(i) in the first sentence—

(I) by inserting after ''7 of this Act'' the following: '', or of the appropriate legal or monetary equitable relief owing to any eligible employee or eligible employees under section 13A''; and

(II) by striking ''wages or unpaid overtime compensation and'' and inserting ''wages, unpaid overtime compensation, or legal or monetary equitable relief, as appropriate, and'';

(ii) in the second sentence, by striking ''wages or overtime compensation and'' and inserting ''wages, unpaid overtime compensation, or legal or monetary equitable relief, as appropriate, and''; and

(iii) in the third sentence—

(I) by inserting after ''first sentence of such subsection'' the following: '', or the second sentence of such subsection in the event of a violation of section 13A,''; and

(II) by striking ''wages or unpaid overtime compensation under sections 6 and 7 or'' and inserting ''wages, unpaid overtime compensation, or legal or monetary equitable relief, as appropriate, or'';

(B) in subsection (e)—

(i) in the second sentence, by striking ''section 6 or 7'' and inserting ''section 6, 7, or 13A''; and

(ii) in the fourth sentence, in paragraph (3), by striking ''15(a)(4) or'' and inserting ''15(a)(4), a violation of section 15(a)(3)(B), or''; and

(C) by adding at the end the following:

''(f)(1) In addition to any amount that an employer is liable under the second sentence of subsection (b) for a violation of a provision of section 13A, an employer that violates section 13A(e) shall be liable to the eligible employee affected for an additional sum equal to that amount.

''(2) The employer shall be subject to such liability in addition to any other remedy available for such violation under this section or section 17.''.

(c) NOTICE TO EMPLOYEES.—Not later than 30 days after the date of enactment of this Act, the Secretary of Labor shall revise the materials the Secretary provides, under regulations contained in section 516.4 of title 29, Code of Federal Regulations, to employers for purposes of a notice explaining the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) to eligible employees (as defined in section 13A of such Act) so that the notice reflects the amendments made to the Act by this section.

SEC. 663. TERMINATION.

The authority provided by this subtitle and the amendments made by this subtitle terminates 5 years after the date of enactment of this Act.

SA 3476. Mr. WARNER proposed an amendment to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; as follows:

On page 188, beginning on line 17, strike ''Congress'' and all that follows through line 20, and insert ''the congressional defense committees, the Select Committee on Intelligence of the Senate, and the Permanent Select Committee on Intelligence of the House of Representatives a plan for the management and oversight of contractor security personnel by Federal Government personnel in areas where the Armed Forces are engaged in military operations. In the preparation of such plan, the Secretary shall coordinate, as appropriate, with the heads of other departments and agencies of the Federal Government that would be affected by the implementation of the plan.''.

SA 3477. Mr. WARNER submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; as follows:

On page 192, after line 22, insert the following:

(c) COORDINATION.—In the preparation of the report under this section, the Secretary of Defense shall coordinate, as appropriate, with the heads of any departments and agencies of the Federal Government that are involved in the procurement of services for the performance of functions described in subsection (a).

(d) ADDITIONAL CONGRESSIONAL RECIPIENTS.—In addition to submitting the report under this section to the congressional defense committees, the Secretary of Defense shall also submit the report to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

SA 3478. Mr. WARNER proposed an amendment to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; as follows:

On page 246, between lines 7 and 8, insert the following:

(d) COORDINATION.—In the preparation of the report under this section, the Secretary of Defense shall coordinate with the heads of any other departments and agencies of the Federal Government that are affected by the performance of Federal Government contracts by contractor personnel in Iraq.

(e) ADDITIONAL CONGRESSIONAL RECIPIENTS.—In addition to submitting the report on contractor security under this section to the congressional defense committees, the Secretary of Defense shall also submit the report to any other committees of Congress that the Secretary determines appropriate to receive such report taking into consideration the requirements of the Federal Government that contractor personnel in Iraq are engaged in satisfying.

SA 3479. Mr. WARNER proposed an amendment to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; as follows:

On page 249, line 16, strike ''(d)'' and insert the following:

(4) The reports under this subsection shall also be submitted to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

(d) JOINT UNDERTAKING WITH THE DIRECTOR OF CENTRAL INTELLIGENCE.—The Secretary of Defense shall conduct the review under this section, and submit the reports under subsection (c), jointly with the Director of Central Intelligence.

(e)

SA 3480. Mr. WARNER proposed an amendment to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of

the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; as follows:

On page 252, beginning on line 10, strike ''and the congressional defense committees'' and insert '', the congressional defense committees, the Select Committee on Intelligence of the Senate, and the Permanent Select Committee on Intelligence of the House of Representatives''.

SA 3481. Mr. WARNER proposed an amendment to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; as follows:

On page 269, line 16, before the period at the end insert ''and, in any case in which section 104(e) of the National Security Act of 1947 (50 U.S.C. 403–4(e)) applies, the Director of Central Intelligence''.

SA 3482. Mr. WARNER (for himself and Mr. LEVIN) proposed an amendment to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; as follows:

On page 112, between the matter following line 5 and line 6, insert the following:

SEC. 574. SENSE OF THE SENATE REGARDING RETURN OF MEMBERS TO ACTIVE DUTY SERVICE UPON REHABILITATION FROM SERVICE-RELATED INJURIES.

(a) FINDINGS.—Congress makes the following findings:

(1) The generation of young men and women currently serving on active duty in the Armed Forces, which history will record as being among the greatest, has shown in remarkable numbers an individual resolve to recover from injuries incurred in such service and to return to active service in the Armed Forces.

(2) Since September 11, 2001, numerous brave soldiers, sailors, airmen, and Marines have incurred serious combat injuries, including (as of June 2004) approximately 100 members of the Armed Forces who have been fitted with artificial limbs as a result of devastating injuries sustained in combat overseas.

(3) In cases involving combat-related injuries and other service-related injuries it is possible, as a result of advances in technology and extensive rehabilitative services, to restore to members of the Armed Forces sustaining such injuries the capability to resume the performance of active military service, including, in a few cases, the capability to participate directly in the performance of combat missions.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) members of the Armed Forces who on their own initiative are highly motivated to return to active duty service following rehabilitation from injuries incurred in their service in the Armed Forces, after appropriate medical review should be given the opportunity to present their cases for continuing to serve on active duty in varied military capacities;

(2) other than appropriate medical review, there should be no barrier in policy or law to such a member having the option to return to military service on active duty; and

(3) the Secretary of Defense should develop specific protocols that expand options for such members to return to active duty service and to be retrained to perform military missions for which they are fully capable.

SA 3483. Mr. LEVIN (for Mr. HOLLINGS) proposed an amendment to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; as follows:

On page 305, in the table preceding line 1, insert after the item relating to Naval Station Newport, Rhode Island, the following new item:

South Carolina ...	Naval Weapons Station, Charleston.	$18,140,000

On page 305, in the table preceding line 1, strike the amount identified as the total in the amount column and insert ''$833,718,000''.

On page 307, line 8, strike ''$1,825,576,000'' and insert ''$1,843,716,000''.

On page 307, line 11, strike ''$676,198,000'' and insert ''$694,338,000''.

On page 314, line 7, strike ''$2,493,324,000'', as previously amended, and insert ''$2,485,542,000''.

On page 315, line 3, strike ''$863,896,000'' and insert ''$856,114,000''.

On page 322, line 15, strike ''$371,430,000'' and insert ''$361,072,000''.

SA 3484. Mr. WARNER proposed an amendment to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; as follows:

On page 24, between lines 9 and 10, insert the following:

SEC. 133. SENIOR SCOUT MISSION BED-DOWN INITIATIVE.

(a) AMOUNT FOR PROGRAM.—The amount authorized to be appropriated by section 103(1) is hereby increased by $2,000,000, with the amount of the increase to be available for a bed-down initiative to enable the C–130 aircraft of the Idaho Air National Guard to be the permanent carrier of the SENIOR SCOUT mission shelters of the 169th Intelligence Squadron of the Utah Air National Guard.

(b) OFFSET.—The amount authorized to be appropriated by section 421 is hereby reduced by $2,000,000, with the amount of the reduction to be derived from excess amounts provided for military personnel of the Air Force.

SA 3485. Mr. LEAHY (for himself, Mr. CORZINE, Mr. KENNEDY, Mr. SCHUMER, and Mr. DURBIN) proposed an amendment to amendment SA 3387 proposed by Mr. LEAHY to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; as follows:

At the appropriate place, insert the following:

SEC. ___. REQUEST FOR DOCUMENTS AND RECORDS.

The Attorney General shall submit to the Committee on the Judiciary of the Senate all documents and records produced from January 20, 2001, to the present, and in the possession of the Department of Justice, describing, referring or relating to the treatment or interrogation of prisoners of war, enemy combatants, and individuals held in the custody or under the physical control of the United States Government or an agent of the United States Government in connection with investigations or interrogations by the military, the Central Intelligence Agency, intelligence, antiterrorist or counterterrorist offices in other agencies, or cooperating governments, and the agents or contractors of such agencies or governments.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. WARNER. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet on Wednesday, June 23, 2004, at 9:30 a.m., to conduct a business meeting to consider legislation and committee resolutions.

The meeting will take place in SD–406 (Hearing room).

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FINANCE

Mr. WARNER. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet in open Executive Session during the session on June 23, 2004, to review and make recommendations on proposed legislation implementing the U.S.-Australian Free Trade Agreement.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. WARNER. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, June 23, 2004, at 10 a.m., to hold a hearing on Nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. WARNER. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, June 23, 2004, at 3 p.m., to hold a briefing on Iraq.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTTEE ON GOVERNMENTAL AFFAIRS

Mr. WARNER. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to meet on Wednesday, June 23, 2004, at 11:30 a.m., to consider the

nomination of David M. Stone to be Assistant Secretary of Homeland Security, Transportation Security Administration.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON INDIAN AFFAIRS

Mr. WARNER. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Wednesday, June 23, 2004, at 10 a.m., in room 485 of the Russell Senate Office Building to conduct a business meeting on pending committee matters, to be followed immediately by an oversight hearing on Indian Tribal Detention Facilities.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. WARNER. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on Wednesday, June 23, 2004 at 10 a.m. on ''The Law of Biologic Medicine'' in the Dirksen Senate Office Building Room 226.

Witness List

Panel I: Dr. Lester Crawford, Acting Commissioner, Food and Drug Administration, Rockville, MD; and Mr. Daniel Troy, Associate General Counsel, Food and Drug Administration, Rockville, MD.

Panel II: Mr. David Beier, Senior Vice President, Global Regulatory Affairs, Amgen, Washington, DC; Mr. William B. Schultz, Zuckerman Spaeder LLP, Washington, DC; Carole Ben-Maimon, M.D., President and Chief Operating Officer, Barr Laboratories, Bala Cynwyd, PA; and William Hancock, M.D., Bradstreet Chair of Bioanalytical Chemistry, Northeastern University, Boston, MA.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON COMPETITION, FOREIGN COMMERCE, AND INFRASTRUCTURE

Mr. WARNER. Mr. President, I ask unanimous consent that the Subcommittee on Competition, Foreign Commerce, and Infrastructure be authorized to meet on Wednesday, June 23, 2004, at 2 p.m. on Peer-to-Peer (P2P).

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON FINANCIAL MANAGEMENT, THE BUDGET, AND INTERNATIONAL SECURITY

Mr. WARNER. Mr. President, I ask unanimous consent that the Committee on Government Affairs' Subcommittee on Financial Management, the Budget, and International Security be authorized to meet on Wednesday, June 23, 2004, at 2:30 p.m. for a hearing entitled, ''International Smuggling Networks: Weapons of Mass Destruction Counterproliferation Initiatives.''

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON FORESTS AND PUBLIC LANDS

Mr. WARNER. Mr. President, I ask unanimous consent that the Subcommittee on Forests and Public Lands of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Wednesday, June 23, at 2:30 p.m. The purpose of the hearing is to review the grazing programs of the Bureau of Land Management and the Forest Service, including permit renewals recent and proposed changes to grazing regulations and related issues. The hearing will also examine the Wild Horse and Burro Program, as it relates to grazing, and the administration's proposal for sage-grouse habitat conservation.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON PRODUCTION AND PRICE COMPETITIVENESS

Mr. WARNER. Mr. President, I ask unanimous consent that the Subcommittee on Production and Price Competitiveness of the Committee on Agriculture, Nutrition, and Forestry be authorized to conduct a hearing during the session of the Senate on Wednesday, June 23, 2004. The purpose of this meeting will be to examine proposed legislation permitting the Administrator of the Environmental Protection Agency to register Canadian pesticides. Agenda: S. 1406.

The PRESIDING OFFICER. Without objection, it is so ordered.

PRIVILEGES OF THE FLOOR

Mr. HARKIN. Mr. President, I ask unanimous consent that Peter Adelman on my staff have the right to the Senate floor for today's business.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. Mr. President, I ask unanimous consent that the privilege of the floor be granted to Michael Zabrensky, a detailee on my staff, during the remainder of this Congress.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, I ask consent that Mr. PAUL Thanos, a legislative fellow in the office of MARIA CANTWELL, be granted floor privileges for the remainder of the consideration of this bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

NATIONAL FETAL ALCOHOL SPECTRUM DISORDERS DAY

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 390, which was submitted earlier today by Senator MURKOWSKI.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 390) designating September 9, 2004, as ''National Fetal Alcohol Spectrum Disorders Day.''

The PRESIDING OFFICER. Is there objection to proceeding to the measure at this time?

Mr. DASCHLE. Mr. President, reserving the right to object, I ask unanimous consent to be added as a cosponsor of the resolution.

The PRESIDING OFFICER. Without objection, it is so ordered.

There being no objection, the Senate proceeded to consider the resolution.

Ms. MURKOWSKI. Mr. President, the notion of reflecting for a moment at 9:09 a.m. on September 9, to recognize that during the 9 months of a pregnancy a woman should consume no alcohol, originated with three individuals. They weren't lobbyists or public relations consultants or social marketing experts. They were parents raising fetal alcohol children.

In February of 1999, Bonnie Buxton and Brian Philcox of Toronto, Canada and Teresa Kellerman of Tuscon, AZ, all parents of fetal alcohol children, asked each other a question.

The question was, ''What if a world full of fetal alcohol parents all got together on the ninth hour, of the ninth day of the ninth month of the year and asked the world to remember that during the nine months of pregnancy a woman should not drink alcohol?'' They asked, ''Would the world listen?''

This simple question launched a worldwide, grassroots movement, organized on e-mail list serves and on the World Wide Web to ask that communities everywhere observe Fetal Alcohol Syndrome Awareness Day on September 9. The first International Fetal Alcohol Syndrome Awareness Day, or FASDAY as it is known, was observed on September 9, 1999. In the ensuing years, the number of communities observing FASDAY has grown and grown. I am proud that my State of Alaska strongly supports the observance of FASDAY and has published a kit of materials to help communities in my State and elsewhere plan their local observances.

Thanks to the support of my colleagues on both sides of the aisle, the U.S. Senate will add its voice in support of this worldwide observance, with the adoption of my resolution designating September 9, 2004, as National Fetal Alcohol Spectrum Disorders Day, which is the new name for FASDAY. I especially appreciate the support of the distinguished minority leader, a longstanding supporter of the fight against fetal alcohol related diseases and a founder of the National Organization on Fetal Alcohol Syndrome.

We choose to call September 9 National Fetal Alcohol Spectrum Disorders Day because science has established that Fetal Alcohol Syndrome is just one of a number of disorders that can befall a child born to a woman that consumes alcohol during pregnancy. The number of children born with Fetal Alcohol Syndrome each year dwarfs the number born with fetal alcohol spectrum disorders.

But whatever you call it, women must know that consumption of alcohol during pregnancy is the single largest contributor to mental retardation,

learning disabilities and birth defects, and all of the fetal alcohol spectrum disorders are completely preventable if a woman consumes no alcohol during the 9 months of pregnancy.

By adopting this resolution we honor Bonnie and Brian and Teresa and all of the grassroots volunteers who have worked so hard in their communities around the globe to educate women about the dangers of alcohol during pregnancy and we recognize the States, counties and cities that have answered the call and organized local observances around International Fetal alcohol Syndrome Awareness Day.

A message is simple—alcohol and pregnancy don't mix. No alcohol during the 9 months of pregnancy, period. The world is listening.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to this matter be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 390) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 390

Whereas the term ''fetal alcohol spectrum disorders'' has replaced fetal alcohol syndrome as the umbrella term describing the range of effects that can occur in an individual whose mother drank alcohol during pregnancy;

Whereas fetal alcohol spectrum disorders are the leading cause of mental retardation in western civilization, including the United States, and are 100 percent preventable;

Whereas fetal alcohol spectrum disorders are a major cause of numerous social disorders including learning disabilities, school failure, juvenile delinquency, homelessness, unemployment, mental illness, and crime;

Whereas the incidence rate of fetal alcohol syndrome is estimated at 1 out of 500 live births and of fetal alcohol spectrum disorders is estimated at 1 out of every 100 live births;

Whereas the economic cost of fetal alcohol syndrome alone to the Nation was $5,400,000,000 in 2003 and that each individual with fetal alcohol syndrome will cost United States taxpayers between an estimated $1,500,000 and $3,000,000 in his or her lifetime;

Whereas in February 1999, a small group of parents of children who suffer from fetal alcohol spectrum disorders came together with the hope that in 1 magic moment the world could be made aware of the devastating consequences of alcohol consumption during pregnancy;

Whereas the first International Fetal Alcohol Syndrome Awareness Day was observed on September 9, 1999;

Whereas Bonnie Buxton of Toronto, Canada, the co-founder of the first International Fetal Alcohol Syndrome Awareness Day, stated the purpose of the observance as: ''What if . . . a world full of FAS/E parents all got together on the ninth hour of the ninth day of the ninth month of the year and asked the world to remember that during the 9 months of pregnancy a woman should not consume alcohol . . . would the rest of the world listen?''; and

Whereas on the ninth day of the ninth month of each year since 1999, communities around the world have observed International Fetal Alcohol Syndrome Awareness Day: Now, therefore, be it

Resolved, That the Senate—

(1) designates September 9, 2004, as ''National Fetal Alcohol Spectrum Disorders Awareness Day''; and

(2) requests that the President issue a proclamation calling upon the people of the United States to—

(A) observe ''National Fetal Alcohol Spectrum Disorders Awareness Day'' with appropriate ceremonies to—

(i) promote awareness of the effects of prenatal exposure to alcohol;

(ii) increase compassion for individuals affected by prenatal exposure to alcohol;

(iii) minimize further effects; and

(iv) ensure healthier communities across the United States; and

(B) observe a moment of reflection on the ninth hour of September 9, 2004, to remember that during the 9 months of pregnancy a woman should not consume alcohol.

SURFACE TRANSPORTATION EXTENSION ACT OF 2004, PART III

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now proceed to consideration of H.R. 4635, which is at the desk.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 4635) to provide an extension of highway, highway safety, motor carrier safety, transit, and other programs funded out of the Highway Trust Fund pending enactment of a law reauthorizing the Transportation Equity Act for the 21st Century.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 4635) was read the third time and passed.

AFRICAN GROWTH AND OPPORTUNITY ACT

Mr. FRIST. Mr. President, the House passed an African Growth and Opportunity Act extension by voice vote last week. This is an important bill for the continued economic development of sub-Saharan Africa.

To date, AGOA, as it is known—the African Growth and Opportunity Act—has created 150,000 jobs, some believe even many more than that.

We cleared that House bill on our side of the aisle last week. We are waiting for some other clearances from the other side of the aisle.

Initially, we were going to ask UC this evening to call up the bill and pass the House bill today. I think we are making tremendous progress. We have had discussions on the floor on both sides of the aisle today, and therefore I will withhold making that unanimous consent request. I am very hopeful, based on progress, that with some further discussions we will be able to clear this bill tomorrow.

Our intention is to clear the bill or, if not, to formally ask unanimous consent to pass the bill before we adjourn for the July 4 recess, given the importance of this bill.

Mr. DASCHLE. Mr. President, if the majority leader will yield.

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. Mr. President, I will just confirm the conversations that the majority leader alluded to. I think we have made real progress, certainly, on both sides of the aisle. There are a couple of other consultations required, but it would be my hope that before the end of the week we would be able to complete our work on the AGOA bill.

This is an important piece of legislation. It has demonstrated its job-building capacity in Africa in particular. We are very hopeful that we can continue that success in the years ahead by reauthorizing this important legislation. So we will have more to say about this tomorrow.